United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

75-1072

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

no .

DOCKET NO. 75-1072

UNITED STATES OF AMERICA,
APPELLEE

-against-

ROBERT SCHWARTZ, DEFENDANT-APPELLANT

APPELLANT'S APPENDIX

(ON APPEAL FROM FINAL JUDGEMENT AND FINAL ORDER IN U.S.D.C., SOUTHERN DISTRICT OF NEW YORK.)

RONALD J. VENEZIANO
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PAUL CURRAN
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF N.Y.
FOLEY SQUARE
NEW YORK CITY, N.Y.



PAGINATION AS IN ORIGINAL COPY

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Docket Onlies

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		vs.		/	264-6395		
· ~	ROBERT SCHWART	Z		<i>i</i>		1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 1	
							
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DATE	. /			PROCEEDINGS	1-	10	
-28-74	Filed indictment					1 1 1	
						(
3-13-74	Filed Govt's information that the above named deft. is also named. Indictment 74Cr201.						
3-18-74	Deft. (atty. pres		ads not	guilty. Motio	ns retu	rnable in 10 c	
2-10-7-	Deft. released of	on his ow	n recogn	izance. Case	assigne	d to Judge Br	
	for all purposes		otley,J.				
3-19-74	Filed Govt's. noti	ce of read	iness for	trial.		• • • • • • • • • • • • • • • • • • • •	
7-3-74	Filed Gov't Voir I	ire.				1 8	
7-3-74	Filed Gov't Reques		ge.		·		
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50514--2

DATE	PROCEEDINGS
1-8-74	Deft. (Atty present) Jury trial begun before BRIMANT, J.
7-9-71	unial cont'd.
7-10-74	Trial cont'd and concluded. Jury verdict GUILTY on COUNTS 1 & 2. P.S.I. Ordered.
	Deft. REMANDED in lieu of sail fixed at \$15,000. Cash or surety. Sentence adj'd
	to 7-31-7/4.
7-10-74	Deft (Atty present) admits being the person so named in the within 2nd offender inform
	Filed Remand dated 7-10-74.
1-10-14	Filed Remain dated 1 to 14.
8-15-71	Filed Deft's Notice of Motion for an Order vacating conviction pursuant to
	agreement with Prosecution, Ret. 9-3-74.
traf.	
Y 0 0	/Gov't Filed Affdyt in Connecition to Motion to Vacate judgment
0-30-74	Filed Affdyt in Opposition to Motion to Vacate judgment.
	Filed Gov'ts Memorandum of Law regarding alleged promiseof Immunity by Government Ager
8-30-71	Filed Gov. 13 Memorandum of Daw Legarding attesed promiseor immunity of dovernments when
	Filed transcript of record of provided in the Control of the Contr
2	Filed transcript of record of proceedings, dated July 8, 10, 1974.
10-10-74	
<u> </u>	Bail, fixed at 15,000 Bonded (July 11,1974) By Public Service Mutual Ins. Co. (7-11-
Jan 6-75	Filed transcript of record of proceedings, dated 120-8, 1974
5.	
1-14-75	Filed the following papers rec'd for Magistrate Raby (Mag#73-16140:
Y	Docket Entry Sheet - Criminal Complaint - Disposition Sheet.
·	
1-21-75	Filed Deft's Memorandum of Law Re Immunity from Prosecution, Petition the Grand Jury
1	Foreman, etc.
4,1	
1-21-75	Filed Gov't MEMORANDUM AND ORDER, re. deft's notice of motion for an order vacating
1-21-15	deft. conviction filed 8-15-74. The motion is DENIED for failure of proof. SO ORDERS
	BRIEANT, J. (m/n 1-21-75)
**	DICTOSTIT. J. (II/II 1-21-17)
9-7-75	Filed Judgment and Commitment Order = The Deft is hereby committed to the custody of
2-7-75	Atty General for imprisonment for a period of EIGHT (8) YEARS on each of COURTS 1 & 2
	to run concurrently with each other, Pursuant to the provisions of Section 841 of Tit
	21, U.S. Code, Deft. is placed on SPECIAL PAROLE for a period of SIX (6) YEARS on each
A.	
	Count, to run concurrently with each other, to commence upon expiration of confinement
	Deft. continued on present Bail until he posts hail pending appeal fixed in the amoun
Asian	of \$15,000, cash or surety BRIEANT, J.
1	(Cont'd on Page #3) 103 / C- /(//)

DATE	PROCEEDINGS	of the transfer contra
2775	Filed Deft's Notice of Appeal from the Judgment of conviction	
2-7-75	him on 2-7-75.	rendered against
	Ou e-1-13.	
2-20-75	Filed transcript of record of proceedings, dated 2-7-75.	
2-11-75	Filed Deft's Amended Notice of Appeal for the judgment of conv	iction rendered :
	against him on 2-18-75. (Copies mailed to Deft & "S Atty)	
\•		
-19-75	Filed CORRECTED Judgment & Commitment Order = Pursuant to Rule	35 of F.R.Cr.P.
<u>:</u>	Judgment dated 2-7-75 is vacated. Deft. is re-sentenced as a	lst offender. The
	Deft is hereby committed to the custody of the Atty General for	or imprisonment for
	a period of THREE and ONE-HALF (3) YEARS on each of COUNTS 1	and 2, to run
	concurrently with each other. Pursuant to the provisions of	Section 811 of Title
	21, H.S. Code, Deft is placed on Special Parole for a period	of THREE (3) YEARS.
	to commence upon expiration of confinement. Deft. is continu	ed on present Bail
	until he posts Bail pending appeal fixed in the amount of \$15	.000. cash or
, k	suretyBRIFANT,J.	
11-75	Dilad Coult 1663-t of 1 H C 1 House C Path 33	
11-15	Filed Gov't Affdvt of A.H.S.A. Harry C. Batchelder, Jr.	

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	No.	

JUDGE BRIEANT 74 CRIM. 201

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

...

ROBERT SCHWARTZ,

Defendant.

INDICTMENT

74 Cr.

FEB 28 1974

The Grand Jury charges:

- 1. From on or about the 1st day of March, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, ROBERT SCHWARTZ, the defendant and Roger Stone, named herein as a co-conspirator but not as a defendant, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.
- 2. It was part of said conspiracy that the said defendant unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

MICPOFILM MAR 1 1974

DAYMOND F. BUILDING AND AND BELL DEPLY CIEFE

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

- (1) On or about March 15, 1973 the defendant
 ROBERT SCHWARTZ had a meeting at the
 Copper Hatch Restaurant at 247 West 72nd
 Street, New York, New York.
- (2) On or about March 20, 1973 the defendant

 ROBERT SCHWARTZ gave 800 dollars to co-conspirator

 Roger Stone.
- (3) On or about March 20, 1973 the defendant

 ROBERT SCHWARTZ sold approximately 25.56 grams

 of cocaine hydrochloride for \$800 (eight hundred)

 dellars.
- (4) On or about March 20, 1973 the defendant

 ROBERT SCHWARTZ gave 50 (fifty) dollars to

 co-conspirator Roger Stone.

COUNT II

The Grand Jury further charges:

On or about the 20th day of March, 1973, in the Southern District of New York, ROBERT SCHWARTZ, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 25.56 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

17, / El buckye

PAUL J. CURRAN United States Attorney UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-V-

ROBERT SCHWARTZ.

AMENDED NOTICE OF APPEAL

Indictment 74 Cr. 201

Defendant.

ROBERT SCHWARTZ 130 WEST 82nd STREET, NEW YORK, N.Y. APPELLANT.

OFFENSE: Conspiracy to violate Sections 812, 841 (a) (1) and 841 (b) (1) (A) of Title 21 UNITED STATES CODE.

Appellant appeals from all judgments and all Orders rendered in this particular case on February 18th, 1975, wherein he was sentenced to imprisonment for a term of 32 years, concurrent.

The above named Appellant hereby appeals to the UNITED STATES COURT OF APPEALS for the 2nd Circuit from the above stated Judgment and Order and from each and every part and the whole thereof does this Appellant appeal.

Dated: March 6, 1975.

Yours etc.,

MARINO & VENEZIANO Attorneys for Defendant Office and P.O. Address 167 WEST 72nd STREET NEW YORK, N.Y. 10023.

To: HON. PAUL J. CURRAN UNITED STATES ATTORNEY

HARRY C. BATCHELDER, JR., SPECIAL ASSISTANT UNITED STATES ATTORNEY. Tel. 873-7297

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-7-

ROBERT SCHWARTZ,

Defendant.

NOTICE OF MOTION
FOR AN ORDER VACATING
CONVICTION PURSUANT
TO AGREEMENT WITH
PROSECUTION

SIR:

phease take notice that upon the annexed affidavit of Ronald J. Veneziano, the attorney for the defendant, and upon all the pleadings and proceedings had herein, the undersigned will move this Court at a part thereof for the hearing of motions at the United States Courthouse, at Foley Square, New York City, on the 3rd day of September, 1974 at 9:30 o"clock in the forenood of that day or as soon thereafter as counsel can be heard for an Order vacating conviction pursuant to agreement with prosecution on the ground that an agreement was made between counsel and the United States Attorney and for such other and further relief as is just and proper.

Dated, New York, August 14,1974.

Yours etc.,

RONALD J. VENEZIANO
Attorney for Defendant
Office and P.O.Address
167 West 72nd Street
New York-City, N.Y.
867-7297

affective of Ronald & Venezean

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v- :

AFFIDAVIT

ROBERT SCHWARTZ,

Defendant. :

STATE O NFE YORK) : SS:-

RONALD J. VENEZIANO, being duly sworn deposes and says that: I am the attorney for the defendant herein.

This is an application for an Order vacating a conviction now had against this defendant after a trial of his action by a Jury.

Defendant was indicted by the Grand Jury for the Southern District of New York, for violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

In July, 1974 said defendant went to trial on said charges and was found guilty by a Jury.

Prior to the time of his indictment and subsequent to the time of his arrest, defendant was told by Detective Michael Bramble, an agent attached to the Joint Task Force, that he would not be indicted and/or prosecuted if he cooperated with the Joint Task Force and gave information leading to the arrest of two or three other narcotic dealers.

arrests were made, one arrest, upon information and belief, of an individual found to be in possession of two kilograms of cocaine. That this cooperation took place in an approximate five month period between the date of his arrest and the date of defendant's indictment. That defendant cooperated with said authorities in

specific Liance upon the promise made him by Detective
Michael Bramble as an authorized agent of the United States Government and the United States Attorneys office.

That Detective Bramble later denied having made such a promise to defendant with the result being that defendant, in violation of said agreement, was indicted, tried and convicted.

That in fact Detective Bramble did so promise and that promise was made in the presence of my associate and partner, Amelio P. Marino, Esq.,

As a consequence of Detective Bramble's denial, your deponent caused defendant to undergo a polygraph examination on the issue of whether or not Detective Bramble made such a promise and such test showed conclusively that defendant was truthful in his account of the alleged agreement.

(see Exhibit #1 attached)

That, after such polygraph results were made known to Special Assistant U.S. Attorney Harry Batchelder, Esq., and a copy of Exhibit #2 given to him, he informed your deponent that it would be studied by his supervisors. At this point, over one month has passed and I have received no response from anyone in the U.S. Attorneys Office.

That as a result, this conviction should be overturned in the interests of fundamental justice for the following reasons:

agent of the United States Government and the U.S. Attorneys
Office with implied or at least apparent authority to enter into
the agreement he entered into and defendant had a right to so rely
on the specifics of this agreement, and defendant did so rely and
performed his obligations under said agreement. Also that the
promise of the Lited States Government as given through it's
agent and accepted in good faith by defendant should be honored,

and it would be unseemly were it not honored.

2. That as a result of defendant's belief of the agreement and specifically relying thereon, he suffered severe and irreparable detriment, to wit; that while fulfilling his part of the bargain and cooperating with Detective Bramble, he did not avail himself of his constitutional right to testify on his own behalf before the Grand Jury which ultimately indicted him, this because, trusting in the word of Detective Bramble that he would not be indicted and prosecuted and believing that Detective Bramble was acting in good faith, defendant belie at the Government would honor the agreement and that defendant would not be indicted. Defendant was, in effect, "lulled" into not testifying on his own behalf in the Grand Jury because he believed that, as he was cooperating, he would not be indicted.

The fact that defendant did not raise this issue at a pre-trial stage is not a bar to his raising it after conviction. Constitutional arguments alleging deprivation of Constitutional rights are never waived. They may, in fact, be raised for the first time even on appeal.

WHENCEFORE, I respectfully request, in the interests of fundamental justice, that an Order be granted vacating defendant's conviction.

Sworn to before me this day of August, 1974.

ROMALD J. VENEZIANO

UNITED STATES DISTRICT COURT SOUTHER: DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

ROBERT SCHWARTZ,

Builder,

AFFIDAVITAIN

OPPOSITION TO MOTION

: TO VACATE JUNCTURET

Defendant.

74 Cr. 201 (CLB)

STATE OF NEW YORK COUNTY OF NEW YORK SOUTHERN DISTRICT OF NEW YORK)

HARRY C. BATCHELDER, Jr., having been duly sworn, deposes and says:

- 1. I am a Special Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I am charged with the prosecution of this case and am fully familiar with its facts.
- dant alleged that an agent of the Drug Enforcement Administration Task Force had promised that the defendant would escape indictment if he provided information about other narcotics violators. The defendant moved to dismiss on the ground that he had cooperated in reliance on the alleged promise, and offered the results of a lie detector test in support of his allegations. The Government represented that no such promise had been made to the defendant by any agent or Assistant United States Attorney, and that Schwartz had offered limited cooperation for a time but later refused. The Court declined to dismiss the indictment or delay trial, noting that it could find no authority for the proposition that a promise by an enforcement agent,

even if made, could bind the Government. The Special
Assistant United States Attorney in charge of the case
agreed to bring the matter to the attention of his superiors
in any event, for whatever action they might deem appropriate.

- 3. The proof at trial consisted entirely of the testimony of Schwartz's co-conspirator and Government agents involved in preliminary negotiations and a single sale of cocaine on March 20, 1973, and certain physical evidence gathered on that occasion. There was no evidence accumulated as a result of Schwartz's agreement to cooperate or as a result of his reliance on the alleged "promise." The defendant was convicted of conspiracy and distribution of narcotics on July 10, 1974.
- 4. By memorandum of July 12, 1974, the prosecutor advised the Chief of the Narcotics Unit, Office of United States Attorney, of the alleged promise, of the agent's denials, and forwarded a copy of the lie detector test report which purported to show Schwartz believed that he had told the truth when he claimed a promise had been made. The Chief of the Narcotics Unit responded that he was in full agreement with the position taken by the prosecutor in charge of the case, and that the prosecution should be pursued.
- 5. By memorandum of August 8, 1974, the prosecutor advised the Chief of the Narcotics Unit that defense counsel had continued to press for some official response to the defendant's charges. It was decided that no formal response was appropriate unless and until the defendant pressed the issue before the trial court or on appeal.

6. The Government opposes defendant's motion to vacate judgment on the grounds set out in the accompanying memorandum of law.

HARRY C. BATCHELDER, Jr.
Special Assistant United States
Attorney

Sworn to before me this

- 29th day of August, 1974.

Note: SEAME BERKETTELD YORK

	he is employed in the office of
	United States Attorney for
the Southern District of	New York, attorney for the
herein.	
That on the	day of, 19, he did serve a true copy of
	herein, located at
	City of New York, by leaving a true copy of the same with
	id office, there being no one present who was authorized to give an admission
of service.	
Sworn to before me this	
day	of, 19
deposes and says that District of New York	day of My St., 1974, he served a copy of the within
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	s that he scaled the said envelope and placed the same in the mail chute
	Inited States Courthouse, Foley Square, Borough of Manhattan, City of
New York.	AMI CHILLO
Sworn to before me this	
29" day of ./	2 egost 1974
- June	3 Deliveriale 6
Notary Public.	ENWALD York
Custified in the	ins County

You will please take notice that a		
of which the within is a copy, was this day duly entered in the within entitled action,	United States Bistrict Court	t
in the office of the Clerk of this Court.	SOUTHERN DISTRICT OF NEW YORK	:
Dated, N. Y.,, 19		
Yours, etc.,	UNITED STATES OF AMERICA	
United States Attorney	-v-	
To Attorney for	ROBERT SCHMARTZ,	
	Defendant.	
Attorney for	X120101L	
Sir:	= 1) -0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0	
Please take notice that the within will be presented for settlement and sig-	AFRICATI IN OPPOSITION TO	
nature to the Honorable	Tour d. current	
the Clerk, Room 601, United States Court- house, Foley Square, Borough of Manhattan,	TEL. 201-3311 (629) United States Atte	orney
City of New York, on the day of, 19, at 10:30 o'clock in the noon or as soon thereafter as counsel can be heard.	Due service of a copy of the within is it by admitted.	ете-
Dated, N. Y.,	New York,, 19	
Yours, etc.,	Attorney for	
	To	
United States Attorney Attorney for		
To	Attorney for	
	PPI-SS-2-22-71-50M-7015	

Attorney for _

Defendant's memorandum of Lan-Regarding alleged Promise of Immunity

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

·V-

74 Cr. 201 (C.L.B., Jr.)

ROBERT SCHWARTZ,

Defendant.

POINT I

THE PROMISE MADE, EVEN IF INSUFFICIENT AS A MATTER OF LAW TO GRANT INSURITY FROM PROSECUTION, SHOULD BE HONORED AS DEFENDANT SUFFERED A DETRIMENT.

Defendant has a due process right to avail himself of all possible actions in the defense of his case including the right to petition the foreman of the Grand Jury to allow him to testify in the Grand Jury and present witnesses and other evidence on his own behalf.

believed he would never be indicted.

By believing the promise of Detective Bramble that he would not be indicted if he cooperated, defendant was in effect "lulled" into not patitioning the foreman of the Grand Jury to testify as he believed he would never be indicted.

By believing the promise of Detective Bramble that he would not be indicted.

339 F34. 425.

BUNTER v. UNITED STATES 405 F. 2d, 1187 9th Cir. 1969 -

failed to give effect to a promise similar to the one at bar only because defendant could show no detriment. That helding clearly stated that, if detriment could be shown, as defendant shows in the case at bar, the

result would be different:

"In the absence of such a statute or of allegations to the effect that in consideration of the promise of immunity Hunter surrendered constitional or statutory safeguards, the alleged oral agreement provides no defense to this case"

POINT II

DEFENDANT'S RIGHT TO PETITION THE GRAND JURY FOREMAN TO TESTIFY ON HIS OWN BEHALF IS A "CONSTITIONAL" RIGHT.

The fifth amendment of the U.S. Constition requiring

Indictment by a Grand Jury unless waived as a constitional condition

precedent to prosecution for a felony clearly sets forth the Grand Juryy

as a safeguard of the rights of the accused, and further, as a safeguard

of constitional proportions.

As such, any and all of defendant's prerogatives in relation to the Grand Jury should also, by logical inference, be regarded as rights of constitional dimension. This includes defendant's right to petition the Grand Jury foreman to be allowed to testify.

Defendant does not claim that he has a right to testify

if the Foreman refuses to allow him to; nor does he even claim that the

Prosecution must inform him of the Grand Jury deliberations. As such the

Government cited both <u>UNITED STATES v. ROSEN</u> 259 F. Supp 942 S.D. N.Y.

1966) and <u>UNITED STATES v. ELKSNIS</u> 259 F. Supp 236 S.D. N.Y. to no avail.

Defendant does claim a right to petition the Foreman to

testify so that the Foreman may exercise his discretion on the question.

As the facts worked out in the case at bar the foreman was never allowed to exercise his discretion because defendant was "lulled" into not requesting to testify because of his belief in the promise made him by agent Bramble.

CONCLUSION

That defendant's Motion be granted in all respects.

Respectfully Submitted MARINO & VENEZIANO, ESQS.,

BY						
	Attorneys	for	Defendant			

Suvernment's Memorandum of Law Regarding alleged fromse HCB, Jr.: ka) of Immunity

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

74 Cr. 201 (CLB)

ROBERT SCHWARTZ,

Defendant.

GOVERNMENT'S MEMORANDUM OF LAW REGARDING ALLEGED PROMISE OF IMMUNITY BY GOVERNMENT AGENTS.

The Government opposes Defendant Schwartz' motion on the legal and factual grounds set out below and in the accompanying affidavit of Harry C. Batchelder, Jr., Special Assistant United States Attorney.

HCB, Jr.:ka

POINT I

The Alleged Promise, Even if Made, Is Insufficient as a Matter of Law To Grant Immunity from Prosecution.

nearly identical to that of the instant case.

In <u>Hunter v. United States</u>, 405 F.2d 1187 (9th Cir. 1969), two Drug Enforcement Administration agents and their Los Angeles Bureau Chief allegedly promised a defendant that he would not be indicted in return for information leading to other narcotics violators, whether or not convictions resulted. The defendant offered information which proved valueless because he had been identified as an informant. In the process, the defendant confessed to his own criminal activity.

The Court refused to vacate sentence,

finding "no statute authorizing enforcement officers

to grant immunity from prosecution on such a ground."

HCB, Jr.:ka

405 F.2d at 1188. The defendant's admissions of guilt during his period of "cooperation" were not introduced at trial, and even if made known to the grand jury did not represent a surrender of constitutional or statutory safeguards in reliance on the alleged promise.

Id.

POINT II

The Alleged Promise, Even if Made and Relied Upon By the Defendant, Resulted in No Prejudice.

Even if such promises were made, and the Government represents that they were not, and even if Schwartz made detrimental statements in reliance, and the Government represents that it has no such statements, no prejudice has resulted to the defendant. The Government's evidence at trial treated only the events leading up to and including Schwartz' sale of cocaine to a Government agent. No part of the Government's case involved any evidence obtained pursuant to the non-binding, alleged promise. Suppression of such evidence at trial would be the defendant's only remedy and only if he could show detrimental reliance. Hunter v. United States, 405 F.2d 1187 (9th Cir. 1969); United States v. Blue, 384 U.S. 251, 255-256 (1966); Shotwell Mfg. Co. v. United States, 371 U.S. 341, 347-8 (1963).

POINT III

A Defendant Has No Constitutional Right to Appear Before a Grand Jury

Defendant's claim of prejudice by forfeit of a Constitutional right to appear before the Grand Jury in reliance upon the alleged promise is inappropriate. Because the Grand Jury is not charged with the duty of deciding innocence or guilt, not all of the procedural safeguards which attend the ultimate trial of the facts are required. Thus, in Grand Jury proceedings, there is no right to counsel, no right of confrontation, no right to cross-examine or to introduce evidence in rebuttal and ordinarily no requirement that the evidence introduced be only such as would be admissible at trial. United States v. Scully, 225 F.2d 113, 116 (2d Cir.) cert. denied, 350 U.S. 897 (1955). Similarly, the defendant has no right to appear before a Grand Jury either under the common law, United States ex rel. McCann v. Thompson, 144 F.2d 604, 605 (2d Cir.) (L. Hand, J.), cert. denied, 323 U.S. 790 (1944), or on Constitutional Due Process grounds. United States v. Rosen, 259 F. Supp. 942 (S.D.N.Y. 1966); United States v. Elksnis, 259 F. Supp. 236 (S.D.N.Y. 1966), cert. denied, 390 U.S. 990 (1968).

HCB, Jr.:ka

CONCLUSION

Defendant's motion should be denied.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

HARRY C. BATCHELDER, JR.
Special Assistant United States Attorney

Of Counsel.

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57 WEST 57TH STREET (212) PLAZA 5-5241 NEW YORK. N. Y. 10019

RICHARD O. ARTHER, B. S. M. A.

GENE SANDACZ
CERTIFIED POLYGRAPHIST SINCE 1968

July 6, 1974

Case No. Y - 2775

PRIVILEGED AND CONFIDENTIAL

Ronald Veneziano, Esq. 167 West 72nd Street New York, N. Y. 10023

Dear Sir:

On July 3, 1974, Robert Schwartz voluntarily came to this polygraph suite for an Arther Polygraph Examination.

The main issue under consideration was whether or not Mr. Schwartz was telling the truth when he made certain claims in regard to his interpretation of conversations with various persons assigned to the Joint Federal Narcotic Task Force.

The facts concerning this case were provided the polygraphist by Mr. Ronald Veneziano, who is Mr. Schwartz' attorney.

Before his pre-test interview, Mr. Schwartz signed two copies of a form stating he was taking the tests voluntarily. One copy of this executed form is enclosed with this report; the other is incorporated as part of our case files.

In the Arther Polygraph recordings there were definite indications of truthfulness when Mr. Schwartz was asked the following pertinent test questions:

- The night you were arrested last year, were you told you would not be indictedif you gave up two people? Answer: Yes.
- 2. Are you lying when you claim the Federal agents promised you no indictment if you co-operated? Answer: No.

3. Are you telling the truth when you claim the Federal agents said there would be no indictment if you co-operated? Answer: Yes.

4. Did you give up those two names because you believed that would stop your prosecution? Answer: Yes.

It is the opinion of the polygraphists, based upon Mr. Schwartz' Arther Polygraph Examination, that Mr. Schwartz believes he is telling the truth to his four pertinent test questions.

Note! It must be remembered that the polygraph will only indicate to a polygraphist what a person believes to be the truth. That is, if a person believes he is telling the truth to a question, even though he might actually be lying or mistaken, the polygraph will indicate truthfulness.

Respectfully submitted,

Richard O. Arther

SCIENTIFIC LIE DETECTION, INC.

Richard O. Arther, President

ROA:m

Polygraphists:

Dori J. Pearl Richard O. Arther

SCIENTIFIC LIE DETECTION, INC.

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GENE SANDACZ CERTIFIED POLYGRAPHIST SINCE 1968

Richard O. Arther graduated with honors from Michigan State University in 1951 with a Bachelor of Science degree in Police Administration. In 1960, he obtained a Master of Arts degree in Psychology from Columbia University.

Following graduation in 1951, he began his polygraph internship in Chicago at John E. Reid & Associates. His instructors were Mr. Reid and Fred E. Inbau, the noted Professor of Criminal Law at Northwestern University School of Law. After six months of intensive training, during which time he was their only student, Mr. Arther received his certificate as an expert polygraphist.

He was then taken into the firm of John E. Reid & Associates as Mr. Reid's Chief Associate. While there, he was selected to do research on a new interrogational device for the Office of Naval Research. This special project took one year to complete.

Mr. Arther remained in Chicago until July 1953, at which time he came to Manhattan to establish on West 57th Street New York State's first full-time polygraph suite.

In 1964, Mr. Arther founded the Polygraph Examiners of New York State, which is the official organization of the state's professional polygraphists. From 1964 to 1972, he was either its President or Board Chairman.

Mr. Arther also founded in 1964 the Polygraph Examiners of New Jersey and from the beginning has been its Secretary-Treasurer. He is a Charter Member of the American Polygraph Association, and in 1971 he received its John Hayden Award for his distinguished contributions to the polygraph profession.

Mr. Arther belongs to other professional organizations, including the American Society of Industrial Security, National Counter Intelligence Corps Association, New York Counter Intelligence Corps Association, International Association of Arson Investigators, Special Agents Association. For twenty years Mr. Arther has been an Associate Member of the International Association of Chiefs of Police and is a Life Member of both the National Sheriffs Association and the Military Police Association.

In addition, Mr. Arther is a member of the United States Industrial Council.

RICHARD O. ARTHER

BOARD CHAIRMAN OR PRESIDENT, 1964 THRU 1972 POLYGRAPH EXAMINERS OF NEW YORK STATE

POLYGRAPH EXAMINERS OF NEW JERSEY

PRESIDENT SINCE 1984
NATIONAL TRAINING CENTER OF LIE DETECTION
MANAGING EDITOR SINCE 1998
THE JOURNAL OF POLYGRAPH STUDIES

From 1954 through 1962, Mr. Arther was on the Police Science staff of Brooklyn College, for several years he instructed the Port of New York Authority Police on interrogation and interviewing, for three years he was on the Police Science staff of Seton Hall University, for two years he was on the staff of the Graduate School of Public Administration of New York University, and was a staff member of the John Jay College of Criminal Justice.

In 1958, Mr. Arther helped found the National Training Center of Lie Detection. Since 1964, he has been both its Director and President. There he has given the basic polygraph training to over 1,000 polygraphists for various state and local law-enforcement agencies as well as the United States Army, Coast Guard, and Marine Corps.

In the past ten years over 1,800 polygraphists have attended his various polygraph seminars, which he conducts several times a year throughout the country. In fact, he conducts more seminars than all other polygraphists combined.

Mr. Arther has personally given polygraph examinations to over 22,000 persons.

The Arther IV Polygraph, which was designed and manufactured according to his specifications, is the most sensitive lie-detection instrument in use today anywhere in the world.

For professional journals Mr. Arther has contributed over 176 articles dealing with the polygraph, interrogation, and scientific investigation. In addition, in 1953 he materially assisted Fred E. Inbau and John E. Reid in writing the third edition of Lie Detection and Criminal Interrogation.

Mr. Arther is Senior Author of <u>Interrogation for Investigators</u> and is the author of the noted college text, <u>The Scientific Investigator</u>. In addition, he founded and from the start has been the Managing Editor of the oldest and largest circulation polygraph publication, <u>The Journal of Polygraph Studies</u>.

Mr. Arther was first listed in Leaders In American Science in 1962. His name also has appeared in other biographical publications, including the past four issues of Who's Who in the East and the past three issues of World Who's Who in Finance and Industry.

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Transcript of Denie RDjw 1 1 UNITED STATES DISTRICT COURT 2 3 SOUTHERN DISTRICT OF NEW YORK 4 UNITED STATES OF AMERICA, 5 6 74 Cr. 201 v. 7 ROBERT SCHWARTZ, 8 Defendant. 9 10 November 8, 1974 11 2:00 P.M. 12 13 BEFORE: . 14 HON. CHARLES L. BRIEANT, JR., District Judge. 15 16 17 APPEARANCES: 18 PAUL J. CURRAN, ESQ., United States Attorney for the 19 Southern District of New York HARRY C. BATCHELDER, ESQ., 20 Assistant United States Attorney 21 RONALD J. VENEZIANO, ESQ., Attorney for Defendant 22 23 24

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MR. BATCHELDER: Ready for the government,

your Honor.

THE COURT: Mr. Veneziano, are you ready?

MR. VENEZIANO: Yes, your Honor.

THE COURT: You may go forward.

MR. VENEZIANO: Call to the stand defendant Robert Schwartz.

THE COURT: Please speak up.

MR. VENEZIANO: I'm sorr.

I call the defendant Robert Schwartz.

ROBERT SCHWARTZ, called on
his own behalf after being duly sworn, testified
as follows:

MR. VENEZIANO: Your Honor, may I ask prior to commencing my questioning whether all other witnesses who will testify at this hearing be excluded during the testimony of this witness.

THE COURT: If there are any fact witnesses here they should be excluded.

Since there is no jury you may go in the jury room.

(Pause)

THE COURT: The government has consented

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that you be excepted from the requirement.

DIRECT EXAMINATION

BY MR. VENEZIANO:

- , Q Give you full name for the record.
- A Robert Howard Schwartz.
 - Q And where do you reside, Mr. Schwartz?
 - A 130 West 82nd Street.
 - Q And how long have you resided at that address?
 - A Approximately about a year.
- Q Now, Mr. Schwartz, did there come a time when you were placed under arrest by Detective Michael Granwood for violations of various federal narcotics actions?
 - A Yes, there was.
- Q Now, do you remember approximately when that arrest took place, as best you can recall from your own recollection?
 - A Around June of last year.
- Q And when you were arrested, would you tell the Court in your own words exactly what happened to you in terms of where you were physically taken and what transpired on that evening.
- Amsterdam Avenue, and I was taken to Varick Street. I believe 201 Varick Street. I don't remember what floor

1	rdjw Schwartz-direct 4
2	in the building I was taken upstairs to.
3	Q What was done to you once you were taken to
4	201 Varick Street?
5	A I was brought into a small room with a bed
6	in the room. It was a very tiny room, and I was sitting
7	there for about ten minutes when Mr. Bramble came into
8	the room, Detective Bramble.
9	Q When Detective Bramble came into the room
10	by the way, was he your arresting officer?
11	A No, sir, he was not.
12	Q Who was your arresting officer?
13	A I don't remember their names. I'm sorry.
14	Q Well, was Detective Bramble present at the
15	time you were arrested? Did he give an assist to
16	your arresting officer?
17	A I didn't see him.
18	Q Now, what did Detective
19	THE COURT: When did you first meet Detective
20	Bramble?
21	THE WITNESS: When I was in Varick Street,
22	sir.
23	THE COURT: After you had been arrested and
21	brought to Varick Street for processing?
25	THE WITNESS: Yes.

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THE COURT: How long after the time you were arrested did you first meet him?

THE WITNESS: Actually I had met Detective Bramble prior to that but I met him on his official capacity -- about I'd say, a half hour I was in Varick Street.

When you met Detective Bramble prior to that, we are talking about quite frankly that period of time when Detective Bramble was acting as an undercover agent and you didn't know it.

That's correct, sir.

The first time you met him as a law enforcement officer was on that evening at 201 Varick Street in that room; is that correct?

That's correct.

Now, when Detective Bramble came in what, if anything, at that time, as best you can recollect, did he say to you and did you say to him?'

He walked in and he smiled and he said "Hello, Bobby."

And then?

And I believe Mr. Pope came in with him also at that point.

As far as you knew, who was Mr. Pope?

A	Не	introduced	Mr.	Pope	as	the	head	of	his
department									

- Q And what happened after that?
- A They told me I would be going to jail unless I cooperated.
- Q Well, were they more specific? Did they tell you the form they wanted this cooperation to take?
- A Yes, they did. What they said was in exchange for my immunity --
 - Q I'm sorry, in exchange for your what?

A In exchange for my not being prosecuted, they told me I would be indicted but not prosecuted, if I were able to assist them in making -- first they asked for three arrests. I said I didn't know about three. I said maybe I could cooperate with two.

We discussed that for about an hour. They brought me some papers to sign, and they told me to go home and they would be in contact with me at a future date.

MR. VENEZIANO: May I have one moment, your Honor?

THE COURT: All right.

(Pause)

Q On that date you were not arraigned or brought

1	rdjw Schwartz-direct 7
2	before a judge, were you, on the date you were arrested?
3	A No, I was not.
4	Q Now
5	A As a matter of fact
6	Q How long would you estimate was the amount of
7	time you stood at 201 Varick Street after you were arrested?
8	A I would say approximately two hours.
9	Q And then you were let go?
10	A Yes. As a matter of fact, that very evening
11	Detective Bramble, upon his guaranty of not being indicted,
12	had me cooperating right from Varick Street. I placed
13	a phone call there for him.
14	Q Not being indicted or not being prosecuted?
15	A Excuse me, to being indicted but not prosecuted
16	was the exact words they used.
17	THE COURT: You were told you would be
18	indicted but not prosecuted; is that correct?
19	THE WITNESS: Exactly.
20	Q You say he made you begin cooperation that
21	evening right from 201 Varick Street.
22	Can you elaborate on that, please?
23	A Yes, sir. By starting cooperation they asked
24	me to dial a phone number which Detective Bramble put
25	ona tape recorder. He recorded the conversation that I

2 had

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had with some party that they were interested in on the telephone right from Variok Street.

THE COURT: Some party that you knew?

THE WITNESS: Yes, sir. That was part of the cooperation.

Q And after you made that call, is that when they let you go?

A I would say shortly afterwards.

Q And they told you that you could go and they would be in contact with you?

A Yes, sir.

Q And subsequent to that day, how much longer did it take for them to get in contact with you?

A I would say probably within ten days.

Q And was that with a view toward making you cooperate further?

A Yes, sir.

Q And was that basically the starting point of the cooperation that you engaged in?

A Yes, sir.

Q And this cooperation was apparently of approximately five months duration?

A That is correct.

Q And when you cooperated during this period

Q

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Was this said in the presence of Mr. Bramble?

felt, that's not relevant what he felt.

Q As well as you can place the time, if you can remember, can you give us the approximate month and year in which this argument, this disagreement with Detective Bramble took place?

A I believe it was approximately three months from the date I was arrested.

Q By the way, during the course of this cooperation you were not making notes and keeping written records, were you?

A Absolutely not. I had no reason to.

Q In view of the fact you were cooperating, is it not the case you felt it would be against your interest to keep written records of the fact of your cooperation?

A Of course.

Q So you did not know at any time names and dates?

A No, I did not.

Q And times of places and meetings and conversations, did you?

A No, sir, I did not.

Q Now, can you please relate to the Court what you said to Detective Bramble and what Detective Bramble said to you with regard to this argument you had?

THE COURT: Fix the time and place and state who else was present.

Q As nearly as you can remember or as best as you can recollection, what was the time and what was the place?

A I believe it was about three months after the night of my arrest, it was during the afternoon. I had made another contact for him. It was my second contact --

THE COURT: Where was this conversation?

THE WITNESS: The conversation took place in the automobile with one of the agen-s with me.

THE COURT: Who was the other agent?

THE WITNESS: I'm sorry, sir, I don't remember his name but it was not Detective Bramble.

THE COURT: You mean yourself and Bramble and somebody else?

THE WITNESS: That's correct, sir.

THE COURT: Where was this automobile?

THE WITNESS: The automobile was parked on

the street.

THE COURT: Where?

THE WITNESS: It was on the east side. I believe, sir, around 28th Street or 29th Street.

THE COURT: All right.

1	rdjw Schwartz-direct 13
2	THE WITNESS: I started to break down in the
3	car and I told them I could not do it any more.
4	Q Why did you feel you could not do it any more?
5	A Because it went against me entirely.
.6	THE COURT: Why did it go against you?
7	THE WITNESS: I didn't feel that I was being
8	right as a person to myself.
9	THE COURT: To do what?
10 .	THE WITNESS: I told them I would give them
11	two. I didn't know about three. After I had given them
12	two they pressed for the third one.
13	THE COURT: You thought there was something
14	wrong about giving three but not two?
15	THE WITNESS: I told them I would have to go
16	out literally and find them, a third person.
17	Q At the beginning when you said that you could
18	give two, that you didn't know about three, was that be-
19	cause you knew relatively easily how you could place
20	your hands on two individuals?
21	A That's correct, sir.
22	Q And that you would have trouble getting the
23	third because you did not know of a third?
24	A That is correct.
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Continue.

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A And I can't remember the exact conversation but they said that it was very important that they have the third party.

I said I would have to go out and find them.

That I remember very clearly.

And they said, "All right, see the best you can do." That's the way they left it with me.

I believe about two days after that, Detective
Bramble came over to my house with one of his assistants
that was present at the trial. I don't remember his name.
And they very strongly proceeded to say, indicate that
they wanted a third party.

- Q And did they indicate to you what would happen in the event they did not get the third party?
 - A I don't remember that, sir.
 - Q But you did in fact get this third individual?
- A Yes, sir, I did. I felt just by them telling me they were interested enough in the third and due to the fact that they told me I was cooperating, that the pressure was on me to get them a third party.
- Q And after you did get them this third individual, did you then have any further conversation with Detective Bramble?
 - A I don't believe so, sir.

1 Schwartz-direct 15 rdjw 2 Then there came a time when you found yourself 3 indicted? That is correct. A 5 Is that right? 6 That is correct. 7 And at the time that you found yourself 8 indicted, did you make any effort to contact Detective 9 Bramble at that point? 10 No, sir, I didn't. 11 All right. 0 12 Was that on the advice of counsel? 13 No, sir. A 14 All right. 15 Did there come a time when you underwent a 16 polygraph examination? 17 THE COURT: No business about polygraphs. 18 I am not going to take proof of polygraphs. 19 MR. VENEZIANO: Your Honor, I do not intend 20 to offer proof in terms of ever trying to put into 21 this Court what the results of that examination were 22 but I thought it would be good to bring this up early on. 23 No business about polygraphs. THE COURT: 24 MR. VENEZIANO: May I be heard vitally further?

If you hear the thrust of my argument maybe you will change

your mind.

THE COURT: Make an offer of proof.

MR. VENEZIANO: The fact that the polygraph examination was given and the way individuals reacted and interacted around that polygraph and the answers that they give with regard to all those facets of this case might be very interesting to your Honor in terms of gauging their credibility, which is always an overall issue in anybody giving testime by.

THE COURT: What is it you propose to prove if permitted about the polygraph?

MR. VENEZIANO: If permitted, I would ask whether or not, not so much for my client but when cross examining Detective Bramble, whether or not Mr. Batchelder ever made Detective Bramble aware that my client had undergone and successfully taken a polygraph examination and if so, what his reaction to it was. I think that would be a very important question and I think the answer would be very significant in terms of the Court judging Mr. Bramble's credibility.

MR. BATCHELDER: Your Honor, that's utter nonsense.

THE COURT: I'm afraid it is. I will decline to take that proof. I will sustain the objection and

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rule it irrelevant and decline to take it. You may have your offer of proof in the record.

MR. VENEZIANG: I will not submit an offer of proof at this time.

Q Other than the statement that you would not be prosecuted if you gave two, perhaps three people, was there any other statement or any other promise made to you by Detective Bramble?

A No, sir, there wasn't.

MR. VENEZIANO: I have no further questions.

THE COURT: Do you wish to cross examine?

MR. BATCHELDER: Just briefly, your Honor,

CROSS EXAMINATION

if I may.

BY MR. BATCHELDER:

Q When did you first tell your lawyer about a promise, alleged promise by Detective Bramble?

A Oh, I would say within a matter of a week after I had been arrested.

Q A week after you were arrested?

A Yes.

Q So your counsel knew about this alleged promise all the way from the day you were arrested, which I take it was sometime in September, until the day before

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trial; is that right?

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No, sir, about a week after.

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Q About a week after?

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A Yes, sir.

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Q You were arrested, I take it, sometime in September; is that correct?

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A No, I believe it was earlier than that, sir.

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O You were arrested in June initially?

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A Yes.

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Q So your counsel knew of this alleged promise of non-prosecution from June until the date of the trial?

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Yes.

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Q So your counsel knew of this alleged promise of non-prosecution from June until the date of the trial?

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A No, I think I was arrested around the middle or towards the end of June. Maybe in July.

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THE COURT: '73?

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THE WITNESS: '73.

I believe there was.

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A Mr. Batchelder --

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Q Excuse me, I will ask the questions, Mr. Schwartz

22

Now, did there come a time when you were inter-

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viewed in the assistant United States attorney's office

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on November 23, 1973?

1	rdjw	Schwartz-cross 19
2	Q	And were you asked certain questions with
3	respect to	your background and also with respect to the
4	events in	question?
5	A	I don't remember the questions now.
6	Q	I just asked you were you asked certain questions?
7	A	Yes.
8	Q	Were you asked certain questions by an assistant
9	United Sta	tes attorney at that time?
10	A	Yes, sir, I was.
11	Q	Was Detective Bramble present at that time?
12	A A	Yes, sir, he was.
13	Q	Did you ever tell the assistant United States
14	attorney a	t that time that you had been promised immunity
15	and you we	re being unfairly prosecuted in this case,
16	yes or no,	please?
17		THE COURT: Did you tell him that in substance?
18		THE WITNESS: I don't believe so, sir.
19		THE COURT: Did you tell him anything about
20	your under	standing that you were not to be prosecuted?
21		THE WITNESS: I do not believe so, sir.
22	Q	Isn't it a fact you made no statement whatso-
23	ever?	
24	A	That may be true, sir.
25	Q	Now

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THE COURT: That last question and answer are somewhat ambiguous.

He gave his name, didn't he, and his occupation and materials like that?

MR. BATCHELDER: Yes, your Honor.

- Q You gave you pedigree, did you not, with respect to your age, marital status, occupation, where you lived?
 - A I believe so.
- Q And you also told you were employed at Paul Sargeant Clothes as a copyrighter in communications; is that correct?
 - A No. sir.

THE COURT: He is asking whether you told the United States attorney that?

THE WITNESS: I did not.

- Q You did not tell the United States attorney that?
 - A No.
- Q Did you ever tell the United States attorney that you made \$800 a month?
- A I have no recollection of telling him that, sir.

MR. BATCHELDER: Your Honor, may I have this

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marked as Government's Exhibit 1 for identification,

3 please.

MR. VENEZIANO: I would object to the question in regard to \$800 a month and the answer. How would that be relevant --

THE COURT: Objection overruled.

(Government's Exhibit 1 was marked for identification)

Q Look at this, Mr. Schwartz, and I would call your attention to the second pages, please.

MR. VENEZIANO: May I see it before he looks at it?

MR. BATCHELDER: Sure.

(Handing)

(Pause)

MR. VENEZIANO: Thank you.

(Handing)

THE COURT: Finish the question, please.

Q I ask you to look at that, please, and ask if you recognize some of the information that is contained on that page.

A Yes.

All right.

Would you please tell the Court what information

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Schwartz-cross

rdjw

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is correct on that page and what information is incorrect on that page?

MR. VENEZIANO: I would object to that kind of question, your Honor.

THE COURT: I will sustain it as to form but
I will permit him to be examined as to what he told the
assistant United States attorney during this process.

Q What did you tell the United States attorney -MR. VENEZIANO: Objection.

THE CCURT: Overruled.

Q What did you tell the assistant United States attorney with respect to your name?

A Yes.

Q With respect to your name?

A No.

Q With respect to your domicile?

A Yes, sir.

Q Your address?

A Yes.

Q That's correct.

May I see this for one moment?

A Yes.

Q And with whom you resided?

A Yes, sir.

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1.	rdjw	Schwartz-cross 23
2	Q	And with respect to the sentences you had
3	received?	
4	А	Yes, sir.
5	Q	And that you had dependents; is that correct?
6	A	Yes, sir.
7	Q	A child and wife?
8	·A	Yes.
9	Q	And you had lived at 130 West 82nd Street?
10	А	Yes, sir.
11	Q	So everything there is correct except what
12	your occu	pation was; is that correct?
13	A	Yes, sir.
14	Q	And would you please tell me where you were
15	employed	at that time?
16	. А	I was doing commercials.
17	Q	Were you employed at Paul Sargent Clothes?
18	A	No, sir.
19	Q	Now, I believe you testified you signed some
20	papers; i	s that correct, at the time you were arrested?
21	A	That's correct.
22	Q	And do you know what those papers were?
23	A	No, sir.
24	Q	Were you ever told what those papers were?
25	,A	I don't recall.

•)	1	١
d	4	-	

z-cross

1	rdjw	Schwartz-cross 24
2	Q	You don't recall.
3		Did you read what those papers were?
4	A	I don't remember if I did or didn't.
5	Q	You don't remember whether you read the document
6	you signed?	
7	A	I don't remember if I did or didn't read it.
8		(Government's Exhibit 2 was marked
9	for io	dentification)
10	Q	I show you what has been marked as Government's
11	Exhibit 2,	which is a waiver of arraignment form, and
12	ask if you	recognize that as your signature.
13	A	Yes, sir, it is.
14	Q	It's your signature.
15		Do you ever recollect reading what that was?
16	A	No, sir.
17	Q	You never did. And you just signed it; is
18	that corre	ct?
19	A	Yes, sir. I was told to.
20	Q	And you did what you were told; is that correct
21	A	Yes.
22	Q	Now, let us go back, if I may.
23		Did there come a time in February of 1970 that

ou were told; is that correct? k, if I may. time in February of 1970 that you pleaded guilty to an information charging you with having brought into the United States 39 pounds of hashish?

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MR. VENEZIANO: Objection, your Honor.

THE COURT: Sustained.

MR. VENEZIANO: I move the question be stricken.

MR. BATCHELDER: I would like to establish if I may that this individual has been arrested before and is aware of some of the procedures with respect to being arrested and the statements that would be made, and that is the reason, and solely that reason.

MR. VENEZIANO: I renew my objection. I really don't see the relevance here. This is not a Miranda hearing.

MR. BATCHELDER: Except it goes to the credibility of the witness testifying that he was given guarantees and promises, and I want to establish that he has been through this routine on at least one occasion in the Eastern District of New York. He has been through this routine in California.

THE COURT: I really don't see any relevancy. I don't think there is any question that the man has two prior convictions. That's a matter of public record and the Court can notice --

MR. BATCHELDER: I am not interested in the convictions per se, your Honor. I am simply interested as to whether he had been interviewed before and had been

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arrested by federal officials before?

THE COURT: I don't see any weight in it,
Mr. Batchelder. I will sustain the objection.

I will take notice of the fact that he has two prior narcotics convictions, for what it's worth. In a sense that made him all the more attractive as a cooperating individual, because he knew his way around in the narcotics business.

Q At the time you were arrested, is it not a fact you were on probation from the Eastern District of New York?

A Yes, sir.

MR. VENEZIANO: Same objection.

THE COURT: I'll take judicial notice of that fact for whatever worth it has here.

Q Is it a fact that you were also on probation from the State of California for possession of heroin?

A Mr. Batchelder, I did not know I was on probation from California until the gentleman that interviewed me prior to coming to this court told me.

THE COURT: Really?

THE WITNESS: Yes, sir. I first found out the

THE COURT: Were you arrested in California?

1	rdjw	Schwartz-cross 27
2		THE WITNESS: Yes, sir.
3		THE COURT: Did you plead to something out
4	there?	
.5		THE WITNESS: Yes, sir, I did.
6		THE COURT: What did you plead to?
7		THE WITNESS: Guilty.
8		THE COURT: To what?
9		THE WITNESS: I was a narcotic offender.
10		THE COURT: And was a sentence imposed on
11	you?	
12		THE WITNESS: No, sir, there was none.
13		THE COURT: You weren't in court before a judge?
14		THE WITNESS: No, sir, I was not.
15		THE COURT: No sentence was imposed on you?
16		THE WITNESS: No, sir, I never was. I went
17	to see the	probation officer directly.
18		MR. BATCHELDER: I show the Court may I
19	have this	marked as Government's Exhibit 3.
20		(Government's Exhibit 3 was marked for
21	ident	cification)
22		THE COURT: Let's go forward, Mr. Batchelder.
23		MR. BATCHELDER: Your Honor, I would like the
24	Court to t	ake judicial notice of a certified copy of an

order entered into in the California Supreme Court entitled,

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"People of the State of California v. Robert Schwartz," stated as follows:

"Sentence as indicated below. Suspended.

Probation granted for three years under the following conditions: No use or possession of any narcotics or dangerous or restricted drugs or associated paraphernalia except with a valid prescription."

The government would offer that into evidence.

MR. VENEZIANO: No objection.

THE COURT: Don't they have to sign a probation agreement out there, the same as they do here?

MR. BATCHELDER: Of course.

THE COURT: You did not sign anything out there?

THE WITNESS: Yes, I did, sir. I signed with

the probation officer, I did.

THE COURT: In there you admit you are on probation for three years, the same as downstairs, the same as across the river in Brooklyn?

THE WITNESS: Your Honor, I was there that day with my attorney.

THE COURT: It's rather peripheral anyway,
Mr. Batchelder. Let's get down to the essence of the
hearing.

1	rdjw	Schwartz-cross	29			
2		(Government's Exhibit 3 was received				
3	in e	evidence)				
4	Q	Now, is it your testimony, still on d	lirect			
5	examinati	ion, that you were taken into a small ro	oom in			
6	June and	you were arrested by Detective Bramble;	is that			
7	correct?					
8	A	No, I was not arrested by him.				
9	Q	But he did appear subsequently; is the	nat correct?			
10	A	Yes, sir, he did.				
11	Q	I believe you testified, am I correc	t, that			
12	you would be indicted but you would not be prosecuted;					
13	is that correct?					
14	A	That is correct, sir.				
15	Q	You were told that by whom?				
16	A	Either by Detective Bramble I bel	ieve			
17	Detectiv	e Bramble while Mr. Pope was present in	the room.			
18	Q	While Mr. Pope was present in the ro	om.			
19		And did Mr. Pope indicate that you w	ould be			
20	indicted	but not prosecuted also?				
21	A	He went along with Detective Bramble	•			
22	Q	He went along with Detective Bramble	?			
23	A	That's right.				
24	Q	And did he say this in words or what	:?			

Detective Bramble said it in words and he told

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me that Mr. Pope was his superior.

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O And did you ask them to put that in writing?

A No, sir.

Q Did you say to them when you were indicted that you weren't supposed to indict me?

A Did I say to them?

Q Yes.

A Who is them, sir?

MR. VENEZIANO: I don't understand that question

THE COURT: I don't either. Frame the question.

Q At any time after your indictment did you contact Detective Bramble?

A No, sir. I said that before.

Q And I believe you testified that you gave three cases; is that correct?

A That's correct.

Q Would you please give me the names of the three individuals?

A Steve Nathanson.

Q And?

A The other one was a Spanish name. I can't remember now. Amelio --

Q These were people you knew?

A These were acquaintances, yes, sir.

1	rdjw	Schwartz-cross 31						
2	Q	Amelio something or other?						
3	A , .	A Spanish name.						
4	Q	And what was the third name? What was the						
5	third person's name?							
6	A	I remember he lived on the east side in the 20s						
7	but I can't remember his name.							
8	Q	He was an acquaintance of yours but he doesn't						
9	remember his name?							
10	A	I don't remember it now.						
11	Q	When did you give this third person, what						
12	month?							
13	A	Within that five month period. I don't remember						
14	what month	n.						
15	Q	Within the five month period from the time of						
16	your arres	st but you don't know when?						
17	A	I don't remember the month.						
18	Q	When did you give the second person?						
19	A	I would say within three weeks after Steve						
. 20	Nathanson	, maybe four.						
21	Q	Within three weeks after Stephen Nathanson?						
22	A	I'd say three, maybe four.						
23	Q	After Stephen Nathanson?						
24	A	That's correct.						
25	Q	And when did you do Stephen Nathanson?						

	A	The	first	meeting	I	believe	was	within	te
days	after	my	arrest			•			

O Ten day s?

A Within ten days after my arrest, the first meeting.

Q And did you sign statements at that time with respect to the extent of your involvement?

A Yes, I did.

MR. BATCHELDER: Your Honor, I would like two documents marked.

(Government's Exhibits 4 and 5 were marked for identification)

Q Did you sign these statements after every time you met someone?

A Not necessarily the same day. Sometimes they were prepared and brought to me or I went to meet them the following day.

Q I show you what has been marked as Government's Exhibit 4 and ask if you recognize Government's Exhibit 4, please? Is that your signature on the second page?

THE COURT: What are you offering to show here, that he did cooperate?

MR. BATCHELDER: Twice, your Honor. Six months difference, your Honor. One in June, one in November

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There is no third cooperation, your Honor. So there could have been no argument between the second and third time.

MR. VENEZIANO: I would object to these gratuitous statements. This is more in the nature of summation at the end of the hearing.

THE COURT: I think we have no jury here, and in order to save your time and mine and his I am entitled to ask the prosecutor where he is going with this line of proof. Perhaps it's something everyone would stipulate to.

Q Do you recognize your signature on Government's
Exhibit 4?

A Yes, I do.

Q Government would offer in evidence Government's Exhibit 4.

MR. VENEZIANO: May I see it?

A Mr. Batchelder, there is one missing.

Q Do you recognize Government's Exhibit 5?

A I recognize it. But there was one before this.

Q Is this your signature?

A Yes, it is.

Q Is that with respect to what individual?

A Excuse me? Jose Alvarez.

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You now recognize this individual's name?

A The name I said before was a Spanish name and I couldn't remember it.

THE COURT: That's the same person you called Amelio?

THE WITNESS: Yes. They are missing one, your Honor.

THE COURT: Don't volunteer information. Your attorney will have an opportunity to examine you shortly.

(Government's Exhibits 4 and 5 were received in evidence)

Q I believe you testified you had a conversation on the east side at some time with another agent.

Do you know that agent's name?

A No, sir. I don't remember it.

Q Do you know where that was?

A Yes, sir.

O Where?

A On the east side in the 20s.

O Do you know when it was?

A About two months after Steve Nathanson.

Q Did that place it some time around August or September?

Perhaps somewhere around there, sir.

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Q Somewhere around August or September. And you were upset, is that correct, with respect to having to go get the third person?

A That's correct.

Q Isn'c it a fact that you met Jose Alvarez subsequent to that date?

- A I knew Jose Alvarez from my methadone clinic.
- Q But you didn't know his name?
- A We had a nickname for him.

MR. BATCHELDER: No further questions.

THE COURT: Any redirect?

MR. VENEZIANO: Before redirect, your Honor, may I ask if the Court has with it -- I just asked Mr. Batchelder and he does not -- the copy of the letter that Mr. Batchelder sent to the Court detailing the quantity and quality and extent of my client's cooperation.

THE COURT: I sent for it just a few moments ago. I don't have it yet.

MR. VENEZIANO: I see.

May I just hold any questioning in abeyance until it comes?

THE COURT: Anything that pertains to that you may. Maybe Mr. Batchelder has a copy of it. It's associated with his pre-sentence report in my files. I

do not have it presently before me.

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REDIRECT EXAMINATION

(Pause)

BY MR. VENEZIANO:

Mr. Schwartz, it's your testimony, is it not, that you in fact gave three and not two individuals?

That's correct.

THE COURT: They are Alvarez, Nathanson and who else?

THE WITNESS: I don't remember the name of the third party, sir but I can describe what happened.

Robert Schulman?

I can't honestly say. I don't remember.

THE COURT: Do you have a copy of Mr. Pope's memorandum of August 13, 1973, Mr. Batchelder?

MR. BATCHELDER: I don't believe so, your Honor. Let me check and see.

THE COURT: I will make a statement for the record. Mr. Pope reports to his superior that the defendant did, as a result of his information, received from him, during the period of his cooperation, cause three cases to be initiated and the dated opened of the cases are June 12, 1973 as to Nathanson, June 27, 1973 as to another case, and November 8, 1973 as to Alvarez. That information

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was furnished, and I would consider the government bound with that statement.

MR. BATCHELDER: No objection, your Honor.

MR. VENEZIANO: That would have been basically the main thrust of any redirect examination, your Honor. I have no further questions.

THE COURT: I don't see the need to state the name of the third person he didn't remember. It may be confidential.

You may step down.

(Witness excused)

MR. VENEZIANO: Call Amelio Marino.

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AMELIO 15

P. MARINO, called

as a witness on behalf of the defendant, after

being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENEZIANO:

What is your occupation or profession?

I'm an attorney.

And you are associated with me in the partnership of Marino and Veneziano; is that correct?

That's correct.

Did there come a time when you had a conversation

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rdjw with Detective Bramble relevant to any agreement made between Detective Bramble and the defendant, Robert Schwartz?

Yes, sir. A

Would you relate to the Court in your own words basically what those conversations were?

MR. BATCHELDER: When and where, your Honor.

THE COURT: I will take the conversations one at a time if there is more than one. I would like you to elicit the time and place and who was present.

Let me just preface it by asking that at the time the conversations took place, did you make written notes of these conversations?

No, sir.

Did you make any stenographic record of any kind of these conversations?

None at all.

At that time did you see any reason to show notate these things?

MR. BATCHELDER: Objection.

THE COURT: Sustained.

Q ... As best as you can recollect, specifically as possible, please tell the Court the substance of each conversation together with the time and place thereof.

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The first conversation I had with Mr. Bramble A was probably back in 1973, June or July of '73. He came to 130 West 82nd Street with three other officers, and at that time we had that discussion regarding Bob --

130 West 82nd Street is where? 0

That's a building which we own and which Bob A Schwartz resides at.

THE COURT: We own, being your law firm owns it?

> Yes, sir. THE WITNESS:

THE COURT: Who was present at this time?

MR. VENEZIANO: A separate real estate

corporation.

THE COURT: He controls it.

Who was present besides yourself?

THE WITNESS: I was present and the police officers were present.

THE COURT: Who?

THE WITNESS: There were approximately four police officers.

THE COURT: And Mr. Bramble?

THE WITNESS: Yes, sir.

THE COURT: Who else?

THE WITNESS: Three other officers.

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THE COURT: Was the defendant there?

THE WITNESS: No, he wasn't there.

Q Now, as clearly as you can remember --

A They wanted to speak to him and that's why they came to me.

Q Please tell the Court as specifically as possible what the conversation was that you had with them and the conversation they had with you.

We had these conversations, but I met, I would say, Mr.

Bramble on one or two occasions. At that time we had

discussions regarding Mr. Schwartz and he indicated

to me that he wanted to cooperate and he wanted two

arrests, there would be only two arrests and that he was

not looking for Mr. Schwartz, he was not interested in

Mr. Schwartz. There definitely would be no prosecution

of Mr. Schwartz.

I subsequently had conversations with --

Just let me backtrack you for a second.

Did he say there definitely would not be a prosecution of Robert Schwartz?

A. They definitely were not looking for Mr. Schwartz. They wanted his cooperation.

Did Mr. Bramble say there definitely would not

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his exact or approximate words?

As nearly as you can recollection, what were

His approximate words was he was not interested

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in Mr. Schwartz, he was not interested in prosecuting
Mr. Schwartz. He was interested in other people and he
wanted Schwartz to cooperate.

THE COURT: What did you do as a result of
these conversations?

THE WITNESS: I spoke to Mr. Schwartz and I said very clearly I was satisfied and I would like him to cooperate so he could get out of the situation.

THE COURT: You knew a detective could not exercise prosecutorial discretion, did you not?

THE WITNESS: Yes, I did.

Q Knowing that, Mr. Marino, why did you tell
Mr. Schwartz you were satisfied with that arrangement?

MR. BATCHELDER: Objection. It calls for speculation.

THE COURT: Overruled.

A I was satisfied Mr. Schwartz had some situation which would probably get him out of the situation here.

THE COURT: You didn't believe that Bramble could exercise the judgment and determine whether or not the indictment should be prosecuted?

THE WITNESS: I didn't believe that. I didn't

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think the police officer would lie to me, Judge. That's the point.

MR. VENEZIANO: No further questions.

CROSS EXAMINATION

BY MR. BATCHELDER:

Q At the time of the first conversation in June,

I believe you testified, wasn't it a fact your client was

cooperating at the time already, yes or no, please?

A Not to my knowledge. Mr. Bramble wanted him to cooperate and he asked me to talk to Mr. Schwartz to get him to cooperate because at the beginning Mr. Schwartz had hesitations about cooperating.

Q Wasn't it a fact though he was cooperating at that time?

- A Not to my knowledge.
- Q Not to your knowledge?
- A No.
- Q He never told you he was cooperating at that time?
 - A Not at that point.
 - Q Do you recollect when that was in June?
 - A :- I can't pinpoint it.
- Q You don't know whether it was the last week of the month or the first week of the month, do you?

A I would say more likely it was the last week
but I don't think the building was ready. The building
was not ready until the middle or towards the end of the
month because we were renovating that particular building

- Q You would say it would be the last week?
- A Towards the end of the month, I would say.
- Q And you had no notes of this?
- A No, sir.
- Q You have no recollection of this other than what you just testified to?
 - A Yes, sir.
- Q You never brought this to the attention of the prosecutor until this moment, did you?
- A I think we did bring it to your attention at some other point.

MR. VENEZIANO: Objection. I would ask
your Honor to take judicial notice of the fact when you
filed my initial moving papers it stated in my affidavit
that Detective Bramble did make statements to Mr. Marino.

reading affidavits which are given to him.

THE COURT: I think perhaps the question can be rephrased.

When did you first call this matter to the

attention of anyone in an official position?

THE WITNESS: I think we submitted an affidavit to Mr. Batchelder. I don't recall the date. I think before the affidavit we spoke to Mr. Batchelder. I think before the affidavit we spoke to Mr. Batchelder and he said he would check on it.

MR. BATCHELDER: Your Honor, the Court may take judicial notice of the fact that the notice of motion was submitted on August 14,1974, your Honor.

THE COURT: If my memory serves, and I would have to go back and check, but I believe a question was raised with me at a pre-trial conference --

MR. BATCHELDER: Correct, your Honor.

of the indictment here, so I don't think there is any element of laches or any adverse inference to follow from a delay in asserting this claim. I think that Mr. Veneziano called this problem to my attention — to yours also — in open court on a date immediately after his arraignment, reasonably soon after his arraignment.

MR. VENEZIANO: Not only that, your Honor, I recall we had several adjournments prior to trial because of this very specific problem. You Honor at each time, in each instance, kept admonishing us to get the matter

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resolved and get it out of the way so the trial could commence or not commence.

THE COURT: I probably did. I tell that to everybody.

THE WITNESS: I think my last question with Mr. Bramble regarding the two or three arrests, at that time Mr. Schwartz had come into my office and he asked me to call him because he was being pressured to give him a third arrest and he didn't want to give a third arrest.

There was a great deal of hesitation at that time. I called Mr. Bramble to try to fulfill the bargain as originally stated.

Q You stated you had two or three other conversations with Detective Bramble, didn't you?

A Yes.

You had those on the telephone?

A Yes, sir.

Q And at that time did he say to you we are not going to prosecute Mr. Schwartz?

A To my best recollection he said it a number of times to me. He was not interested in Mr. Schwartz. He wanted his cooperation, and this case was not to go forward.

Did he say he would not prosecute?

sir.

MR. VENEZIANO: Objection. Does he mean the exact words?

THE COURT: Overruled. Did he say that in words or substance?

THE WITNESS: Not prosecute Mr. Schwartz, yes,

Q He said that?

A Yes, sir.

Q He said that on all three occasions; is that correct?

A I don't recall how many times he did say it.

I don't know if he stated it on the phone to me. He

definitely stated it to me at the time we met or on the

telephone.

THE COURT: You knew at all times, except for your hope that that expectation would be realized, you knew that Bramble was ultra vires in making any such statements, didn't you?

THE WITNESS: I don't know, Judge. I took him at his word. In fact, Judge, I didn't get involved in this case, only because of that statement. We never got involved. In the first five or six months we never got involved in the full extent in this case because of that.

THE COURT: You as a lawyer knew he was a

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detective, did you not?

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THE WITNESS: Yes, sir.

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authority to decide whether the case would be prosecuted

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or not, didn't you?

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THE WITNESS: Yes, sir.

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THE COURT: At all times you knew that he

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lacked the power and authority to make good on his state-

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THE WITNESS: I can't say for sure, Judge.

THE COURT: You knew he lacked the power or

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I thought he would fulfill this bargain somehow or

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other. I don't know, Judge. It didn't even occur to

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me at that particular time.

THE COURT: Anything further from Mr. Marino?

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MR. VENEZIANO: I have nothing.

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THE COURT: You are excused, sir.

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(Witness excused)

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MR. VENEZIANO: I have nothing else, your Honor.

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THE COURT: Are you resting?

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MR. VENEZIANO: I rest.

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MR. BATCHELDER: The government would call

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Special Agent John Pope, your Honor.

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held?

At the office 26 Federal Plaze.

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It was not held at 1201 Varick Street?

To the best of my knowledge it was ODALE.

Did there come a time when you were present during an interview by Detective Bramble of the defendant,

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Robert Schwartz?

A Yes.

Q And during the course of that interview, did you hear Detective Bramble state that this defendant would not be prosecuted if he cooperated with the federal government?

A No, I did not.

Q Did you hear words or substance to the effect that in exchange for this defendant's immunity he would not be prosecuted?

A I did not.

MR. VENEZIANO: I would object to the term "immunity." No one claimed he had formal immunity.

THE COURT: The question was incomprehensible.

MR. BATCHELDER: The first statement by the witness was not going to jail in exchange for immunity.

THE COURT: The transcript will show but my bench notes contain no word about immunity.

Q At any time during the course of this interview, did you hear the word immunity mentioned?

A Not to my knowledge.

Q. And at any time during the course of this interview, did you state that the defendant would not be prosecuted if he cooperated with the federal government?

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I did not. A

Were you present at any other interviews of the defendant or in any other actions involving the defendant other than June 12, 1973, if you can recollect?

In your question --

Did you ever meet the defendant subsequent to that date?

Yes, I did.

At any time during the time you met the defendant did you say to the defendant he would not be prosecuted if he cooperated with the federal government?

> A I did not.

MR. BATCHELDER: No further questions of this witness, your Honor.

CROSS EXAMINATION

BY MR. VENEZIANO:

Agent Pope, given the type of work that you were doing, that is, narcotic enforcement, wouldn't it be fair to say that basically the foundation of any good work you were able to do came from the use of informers?

THE COURT: The Court knows that. It's argumentive and the Court knows it is true.

Now, when you got an informant, whether it

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be Mr. Schwartz or any other informant, was there not usually some specific arrangement made with that informant even if only to bring to the attention of the sentencing judge the quantity and quality of his cooperation?

A Well, in answering that, I can't answer that really with a yes or no. If I might explain --

Q Let me just rephrase that.

Up until the time you arrested or participat in the arrest of Robert Schwartz, how long had you been doing this work?

- A Approximately eight and a half years.
- Q And during this eight and a half year period you had utilized the service of many informants, hadn't you?
 - A I have.
- Q In utilizing the services of these informants did not a certain set of procedures evolve out of the use of these informants in terms of what they would obtain in exchange for their cooperation?
 - A There is one.
 - Q Over a period of time?
 - Yes, there is one.
- Q And wouldn't it be fair to say that a uniformation of these informants was a desire to stay

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out of prison if at all possible?

MR. BATCHELDER: Objection as irrelevant.

THE COURT: I think it's obvious it is an argumentive question. The Court knows that. Nobody wants to go to jail. He says there is a procedure.

Can you tell us what that procedure was or is or still is?

Still is. Our bureau policy and which I use is that any cooperation given by an individual will be made known in writing to the assistant U.S. attorney. At that time, on the other side of that, that's our only instructions to an individual that agrees to cooperate.

But you tell this to the informants, don't You say in return for your cooperation we will analyze your cooperation and we will give the U.S. attorney a report of it; you tell this to each informant you deal with?

Yes.

Likewise you told us according to your testimony to Robert Schwartz; is that correct?

That's correct.

THE COURT: Did you tell him or did Mr. Bramble tell him?

THE WITNESS: I'm sure I told him also,

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your Monor. But normally this is given out during the course of the debriefing interview with all arrested individuals.

Now, do you not also tell them that this information that is made available to the U.S. attorney will in the natural course of events also be made aware to the Court?

A Our letters are directed to the assistant U.S. attorney.

As a practical matter you know, don't you, that when the information goes to the U.S. attorney it is ultimately passed on to whomever the sentencing judge is; is that right?

A Normally the judge is made aware of the cooperation of the individual.

O The judge who pronounces sentence?

A Right.

Q You have been an agent for eight years and I am not telling you anything you don't know, right?

A That's right.

Q Explicit and implicit in this arrangement with Robert Schwartz, was the fact according to you that the extent of his cooperation was going to be made known to the United States attorney who in turn would make it

THE COURT: Would not be.

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Would not be prosecuted; is that correct?

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of your notes indicating records for your benefit, indicating the extent of time of cooperation, not anything the Court has or that the United States attorney has, anything that you have.

A I do not.

Q You knew you were going to come here and testify, did you not, sir?

MR. BATCHELDER: Objection.

THE COURT: Let's get off that.

Q During this period of time you knew, did you not, that the defendant Robert Schwartz never entered a plea of guilty to anything?

A I'm not aware of whether he entered a plea of guilty or not. My group supervisor handled all the cases that came through the office.

Q Let me ask you this, if you know: In dealing with informants isn't it the usual procedure that the informant, who is the arrested informant, at some point enters a plea of guilty and then has the report of his cooperation go before the sentencing judge before whom he enters the plea; you know that to be a fact, don't you?

MR. BATCHELDER: Objection as to whether it is the practice.

it to be the fact but my understanding is that it is not dependent on whether he enters a plea of guilty. In fact the procedures followed in this particular case are such that the Court has received a demissive from Mr. Charles E. Hill, the chief of the New York Drug Enforcement Task Force, in this very case, which is dated August 14, 1974 and which indicates to me that they follow the same procedure with respect to persons who have cooperated whether or not they plead guilty.

So I think that is rather irrelevant. The question is what is the legal effect of whatever discussion he had with Mr. Bramble.

Q Let me take you for a minute to this business of giving two over or giving three over. The numbers of individuals whom Mr. Schwartz was supposed to give up as a result of his cooperation.

Now, can you tell us what the number was, the number of individuals whom Mr. Schwartz was supposed to give over?

- A Our policy --
- Q I'm asking you a very direct question.

Can you tell us if there is the number of individuals whom Mr. Schwartz was supposed to give over

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as a result of this agreement?

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A There is no set number.

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Q Well, I know that there is generically no set number --

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MR. BATCHELDER: Is he asking a question or testifying?

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THE COURT: Yes.

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Q Did you not ask Mr. Schwartz for a specific amount of individuals as a result of his cooperation?

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A Not to my knowledge.

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Q Well, did you not set a certain quota or a certain standard of productivity which you wanted him

of the person that would be the defendant would depend

on our writing the letter. In other words, if we take

and he is a documented dope peddler, that case would

street peddlers. That is the determination. That's

where we put our guidelines.

one individual and we seize 20 pounds of heroin from him

weigh, in our eyesight, 20 times as much as 20-one ounce

A The degree and the quality and the quantity

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to adhere to as a result of his cooperation?

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think it makes any difference in this case even if your theory is correct. If he was given a goal or quote of

4	the time he was arrested and the time he was indicted?				
5	A No, I don't.				
6	THE COURT: That's in my record anyway. Date				
7	of arrest was June 12, '73; is that right?				
8	MR. VENEZIANO: Yes, your Honor, exactly.				
9	Q Did there come a time when you had a conversa-				
10	tion with Mr. Batchelder, special assistant U.S. attorney				
11	with regard to whether or not a specific promise of non-				
12	prosecution had been made to my client; did he ever come				
13	to you and approach you with questions regarding that				
14	subject?				
15	A I believe Mr. Batchelder we discussed this				
16	on one occasion. The date I don't recall.				
17	Q He came to you and he did broach the subject;				
18	is that right?				
19	A Yes.				
20	Q Did you enter into a discussion with him?				
21	A I think some short discussion.				
22	Q Well, when you say short discussion, how short				
23	was the short discussion?				
24	THE COURT: Forget that. Ask him a question.				
25	Q Did Mr. Batchelder ask you verv, very specific				
	Sor.				

Pope-cross

Q Do you know how much time elapsed between

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three, he met it.

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1	rdjw	Pope-cross 61		
2	and penet:	rating questions with regard to whether or not		
3	such a pro	omise had been made or did he just ask you		
4	one or two	questions and leave the subject drop?		
5	A	He had asked if I made any promise of non-		
6	prosecution and my answer to that was no.			
7	Q	Did he ask you anything else?		
8	A	I don't recall now very much of the discussion.		
9	Q	How long ago did this interview take place,		
10	if you car	remember?		
11	A	It was either the last, as I recall, the last		
12	of last mo	onth or the beginning of this month.		
13	Q	Well, didhe ask you this question when Mr.		
14	Bramble wa	s present or were you alone?		
15	A	I don't recall.		
16	Q	You don't remember if Mr. Bramble was there?		
17	A	I don't.		
18	Q	He might have been?		
19	A	I don't recall.		
20	Q	All right.		
21		Did Mr. Batchelder ask you to sign any affidavits		
22	to the eff	ect that no promise of non-prosecution was		
23	made?			
24	A	No.		
25	Q	Did Mr. Batchelder ask you to consult any of		

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your own private records or notes with a view toward your determining whether any promise of non-prosecution was made?

A Not to my knowledge.

Q Did he ask you to speak with any of your associates to determine whether or not you can recollect whether any promise of non-prosecution was made?

A I think our conversation was that I would like to talk with -- I think he mentioned Detective Bramble.

Q This is Mr. Batchelder talking now, saying this?

A Yes.

Q Did he ask you to talk to Detective Bramble?

A Not to my knowledge.

Q Well, if you can remember that he asked you or said to you that he would like to talk to Detective Bramble, we can infer from that that Detective Bramble was not present during that conversation, can't we?

MR. BATCHELDER: Objection as to what we can infer.

THE COURT: Sustained.

Q Does your statement that he told you he would like to talk to Detective Bramble refresh your recollection as to whether or not Detective Bramble was present at

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that conversation?

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MR. BATCHELDER: Objection.

THE COURT: I will permit that question.

I have many discussions with Mr. Batchelder, and during the course of discussions he might ask someting with reference to another case and I don't recall as to whether Mr. Bramble was with me at the time he asked.

All right. So basically what your discussion with Mr. Batchelder amounted to was simply Mr. Batchelder coming to you and asking you the simple question and your giving the answer, and that was basically the entire thrust of the discussion; is that right? There wasn't anything more to it, was there?

I think it's being simplified by saying that.

You tell me what went on at that discussion, unsimplify it?

BATCHELDER: Haven't we been over it.

I don't see where we are going. The Court is prepared to find that the U.S. attorney did ask Mr. Pope and Mr. Pope told him no. You don't dispute that, do you?

MR. VENEZIANO: I don't dispute that but I would like very much to know whether the investigation conducted by Mr. Batchelder was somewhat more in depth.

THE COURT: What difference does it make? Suppose he passed him on the street and asked him the question on the way to lunch?

MR. VENEZIANO: It would indicate a state of mind or an attitude of getting the truth or asking a ritual question.

THE COURT: It place to get at the truth is right here.

I don't think it's too relevant what he did. We are here to get the truth today.

Q During the months of cooperation with Robert Schwartz, did you ever have occasion to discuss with Mr. Batchelder the progress of the cooperation, how it was coming along, whether you were satisfied with it or not, et cetera, during the period of cooperation?

THE COURT: You can answer that ves or no.

- Q Answer that yes or no.
- A I don't recall.
- Q You don't recall whether you had ever spoken to Mr. Batchelder with regard to whether or not Mr. Schwartz was cooperating and whether he was satisfied with it?
 - A I don't recall.
 - Q Well, part of your job besides working with

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with the informant will come to me and sav that on such and such -- that so and so initiated so many cases we need a letter to the assistant that's handling the case. At that time I will sit down and go through the case with the case agent. We draw up a letter and the letter is submitted.

THE COURT: You do that without regard to whether the informant has pleaded quilty or not quilty; is that so?

THE WITNESS: That's correct. If he has cooperated we submit a letter.

- Q Is that what you did in this situation?
- A Yes, I believe so.
- Q Is it fair to say then you got the information you put in your letter from Agent Bramble?
 - A In all probability, yes.
- Q Well, you got the information second-hand in the sense that you did not work directly with Mr. Schwartz, did you?

A When you say worked directly with him, I did not work undercover with him. I conducted surveillance.

I'm out there with the guys in the street.

Q Did you know Detective Bramble worked directly with Mr. Schwartz?

1	rdjw	Pope-cross	67		
2	A	I don't believe he did.			
3	Q	Can you give me the names of the	agents who		
4	did?				
5	A	On one occasion Special Agent Mc	Ginn and a		
6	Detective McGorey.				
7	Q	The years that you have worked a	t your position		
8	and given the informants you have dealt with, have you				
9	had many occasions before to testify, whether on trial				
10	or in some other proceeding, against any of those				
11	informants?				
12	A	Yes.			
13	Ó	On roughly how many occasions, i	f you can		
14	recall?				
15	A	I have no knowledge in number.	I would say		
16	maybe twenty.				
17	Q	And these are people who coopera	ted but never-		
18	theless entered pleas of not guilty and went to trial;				
19	is that right? Is that the reason why you found it necessar				
20	to testify	against them?			
21	A	Or become involved in other activ	ve junk cases,		
22	other acti	ve narcotic cases.			
23	Q :	There have been occasions where	you have		
24	worked with informants then found it necessary to testify				
25	against them because these people did not plead quiltur				

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and went to trial?

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Yes. A

This is on 15 occasions; is that right? 0

When you draw the line, like you have drawn A it, where they withdraw the plea. When you said , have I ever testified against informants that have worked for the government. Of course, now that includes individuals that get additional cases --

I'm sorry, maybe I wasn't clear.

Had you ever had occasion before to work with an informant after he was arrested on a specific charge and then find it necessary to testify against that informant on the trial of that specific charge for which he was arrested because he went to trial instead of entering a plea of guilty? That's my specific question.

Yes. A

Now, approximately how many times did this occur in your eight years of work?

Oh, maybe five times, I guess.

Maybe five times?

Yes.

How many informants would you say you have dealt with in total during this eight-year period?

Maybe a hundred.

Q A hundred?

A Yes.

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Q Well, the vast majority, the other 95 percent of those informants in fact entered pleas of guilty prior

to their cooperation; is that correct?

A I have no knowledge of that. When I say -- might I explain?

Q Well, let me just ask you this: As an individual who has worked in this field you know, don't you, that the vast majority of informants who cooperate enter pleas of guilty and have their cooperation brought to the attention of the sentencing judge, the vast majority of those informants plead guilty and do not go to trial? That is basically the thrust of my question. You know that, don't you?

MR. BATCHELDER: Objection, your Honor. I would like to know when they plead guilty. His obfuscation goes to the fact of when they plead guilty.

THECOURT: You see, as I understand the federal statistics, approximately 87 percent of all defendants plead guilty. In most of these cases that this man runs into -- we don't have to overlook the everyday commonplace knowledge that lawyers and judges have. We don't have to belabor the obvious. This Court knows most

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of the narcotics cases involve the purchase of narcotics by the agent where they catch the defendant cold and red-handed. He made a sale to the agent and the money and narcotics passed through his hands. Ordinarily there is not much to try in front of a jury in that kind of a case. So most of those fellows do plead quilty. That's no secret.

Let's go on to something more rewarding here. MR. VENEZIANO: I am trying to make it more rewarding.

THE COURT: You allege a promise made by Mr. Bramble and here you are wasting my afternoon with Mr. Pope.

MR. VENEZIANO: One or two more questions.

Isn't it a fact based upon your experience that those informants who cooperate most heavily and the most willingly are those individuals who have entered pleas of guilty and have the Damocles sword, so to speak, of sentence hanging over their heads? Isn't that your common experience in this position?

Could you rephrase your question to the point where I can understand it?

Don't you do better in terms of obtaining results from informants who enter pleas of quilty and are

cooperated to a fair degree in terms of quality, this

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individual is the type of individual based on the cooperation he gave that probably would have entered a plea of guilty and hoped for leniency and this type of cooperation and this extent of cooperation and this quality of cooperation would not normally come from an individual who was waiting to go to trial. Only from an individual who believes that if he cooperates he is not going to be brought to trial on a promise.

MR. BATCHELDER: That's the height of speculation.

THE COURT: It may be an argument but it's not something you can elicit by testimony.

(Pause)

THE COURT: I want to make the observation,
and I think this case confirms it to be so, that they
would call to the attention of the sentencing Court
a person's favorable activities in the area of cooperation
wholly without regard to what his plea was.

Furthermore, so there won't be any mystery about it, I can tell you I can think from memory of at least one case where a man cooperated for a lengthy period and then he decided it was a little dangerous cooperating and he would rather take his chances and he stopped cooperating and he went to trial. So this is not

unheard of. But I think you have to come back to the basic point, and the argument has another side: If a man knew he was cought red-handed selling to an agent, this is not a case which depended solely on the testimony of a fellow criminal. Your client participated in the sale in the presence of an agent, so he must expect in the fullness of time regardless of his plea a jury is going to convict him. She he has every reason to cooperate so that if he loses his case, which in fact did happen with Schwartz, he would get some kind of a break on his sentence for his cooperating. I don't see the problem there.

MR. VENEZIANO: One or two more questions.

THE COURT: This is a red-handed case here, wasn't it? This man was selling to an agent.

Q He began his cooperation on the very night he was arrested; is that correct?

A Yes.

Q That night you asked him to place a phone call?

- A Yes, a phone call was placed.
- He placed that whome call?
 - A Yes.
 - Q And was it on that very first night that you

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made the agreement with him that a letter of cooperation would go to the U.S. attorney if he cooperated?

A That's correct.

Q And that's all the discussion there was that you discussed on that first night and nothing else, with regard to what he would get for cooperation?

A That's correct.

- Q Pursuant to that he began cooperating immediatel
- A That's correct.

Q And there was never any numbers involved? You never asked for two or three or specified a standard of productivity you wanted him to adhere to; is that correct?

A No. Because the one 20-kilo case would have sufficed for twenty.

Q Besides Mr. Batchelder not asking you to sign an affidavit when you discussed the matter with him, did he by any chance ask you to take a polygraph examination?

MR. BATCHELDER: Objection.

THE COURT: If you mention the word polygraph once more in this hearing without my permission you will be in violation of my directions.

MR. VENEZIANO: I'm sorry, your Honor.

y?

THE COURT: I permitted you to make an offer of proof about polygraph. If you want to make another offer of proof about polygraph I will permit that. But no more examination of this witness in this proceeding without polygraph.

MR. VENEZIANO: I thought that meant with Defendant Schwartz.

THE COURT: If you want to make an offer of proof I will take it.

MR. VENEZIANO: I will make no offer of proof and I apologize.

THE COURT: Do you have any redirect examination?

MR. BATCHELDER: None, your Honor.

MR. VENEZIANO: Nothing else.

THE COURT: You may step down.

MR. BATCHELDER: The government would call as its next witness Detective Michael Bramble.

MICHAEL P. BRAMBLE, called as a witness on behalf of the Government, after being duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. BATCHELDER:

May we have your occupation, please?

I am a detective for the New York City Police Department.

- And how long have you been a detective?
- Since 1970.
- And your present duties, please?
- New York Drug Enforcement Task Force. A
- Calling your attention to June 12, 1973, did you have occasion to interview one Robert Schwartz?
 - I did not interview him, no, sir. A
 - Did you have a discussion with him?
 - Yes, sir.
- Would you please tell the Court and jury the sum and substance of that discussion as you remember it.
- I was informed that Mr. Schwartz was going to cooperate with the government.

THE COURT: Who told you that?

THE WITNESS: I'm not exactly sure. I believe it was either Mr. McGinn or Cole.

O .. And then what happened?

I met Mr. Schwartz at the office and he told us that he can --

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MR. VENEZIANO: I can't hear the witness.

THE COURT: Spea k up a little louder.

THE WITNESS: Mr. Schwartz stated that he could do somebody that night. He wanted his freedom.

MR. VENEZIANO: I didn't get that, your Honor.

THE COURT: Please speak up nice and loud.

THE WITNESS: Mr. Schwartz stated that he could do somebody that night. He didn't want to go to jail and he named the individual Steve Nathanson that he said I knew from another narcotics situation.

And what happened?

Mr. Schwartz made a telephone call and I believe that night or the next day after 12:00 midnight, the 13th, the group initiated a case on Steve Nathanson.

Q During the course of your discussion with Mr. Schwartz did at any time vou inform him he would not be prosecuted if he cooperated with the government?

No, sir.

At any time did you tell him that in exchange for his cooperation he would be granted immunity?

No, sir.

Was Special Agent Pope present with you during the course of a portion of this examination or discussion you had with Mr. Schwartz?

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A Yes, sir.

Q And at any time during Special Agent Pope's presence did you state that you would give this person immunity for his cooperation?

A No, sir.

MR. VENEZIANO: I am going to object. We never claimed that he offered immunity, your Honor.

THE COURT: Objection overruled.

O Did there come a time when Robert Schwartz did cooperate with the government?

A Yes, sir.

Q And he cooperated on two or three occasions; is that correct?

A Yes, sir.

THE COURT: Occasions or cases?

MR. BATCHELDER: Cases.

THE COURT: Three cases.

THE WITNESS: Yes, sir.

Q And did you bring this cooperation to the attention of the United States attorney through your group supervisor and through Mr. Hill?

A Yes, sir.

O Did there come a time when you had a conversation with Amelio Marino?

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A Yes, sir. One who said he was a Mr. Marino.

I did not know him.

O Did you ever go up to 130 West 82nd Street and meet with Mr. Marino?

A No, sir.

Q Did you have a telephone conversation with Mr. Marino?

A One who said he was Mr. Marino.

Q What did you say to Mr. Marino and what did he say to you, the person purported to be Mr. Marino?

A I informed Mr. Marino that I had just finished talking to an assistant United States attorney Batchelder and informed Mr. Batchelder of Mr. Nathanson's cooperation with the government --

MR. VENEZIANO: Mr. Nathanson's cooperation?
THE WITNESS: Excuse me, Mr. Schwartz.

I told him that Mr. Batchelder felt that Mr.

Schwartz did not fully cooperate with the government in that he only gave us one good case and two small cases, that he did not live up to his agreement and that it was felt that Mr. Nathanson -- Mr. Schwartz should try to help the government in one more case. If Mr. Schwartz did not cooperate with the government, Mr. Batchelder stated that he was planning to indict Mr. Schwartz at that

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time and to go ahead with preparing for trial.

Did at any time you have a conversation with me with respect to immunity for Mr. Schwartz?

No, sir. A

Q Did at any time you ever tell me that you had told Mr. Schwartz that he would not be prosecuted in this case?

No, sir. A

Did at any time I inform you that I was going to give immunity to this defendant?

No, sir. A

Did you have any other conversations with Mr. Marino or persons who purported to be Mr. Marino by telephone or in person?

A No, sir.

Did you inform Mr. Schwartz that the government was going to proceed against him?

No, sir. A

MR. BATCHELDER: I have no further questions of this witness.

THE COURT: What is that 82nd Street address?

MR. VENEZIANO: 130 West 82nd Street.

THE COURT: Have you ever been there?

THE WITNESS: Yes, sir.

Bramble-cross

to him or go out on a particular narcotics case.

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THE COURT: In connection with Mr. Schwartz?

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THE WITNESS: Yes, sir. That's where he lives. Several occasions I would pick him up and talk

THE COURT: Did you ever talk to the landlord

THE WITNESS: No, sir, I never did.

CROSS EXAMINATION

up there?

BY MR. VENEZIANO:

Q Your testimony is you never spoke to Mr. Marino in the hallway of 130 West 82nd Street?

A If you point to that gentleman, no, sir. I never did.

THE COURT: Stand up, Mr. Marino, please, and take your hand away from your face.

Q Your testimony is you never spoke to Mr.

Marino at 130 West 82nd Street regarding a matter of the government of the United States versus Robert Schwartz?

A That is correct, sir.

Q Never stood face-to-face with him and had a conversation?

A No, sir.

Q You testified that Mr. Batchelder told you that Robert Schwartz had not been cooperating fully or

had	no	t t	een	cod	pera	ating	sufficiently;		is	that	correct?	
Isn	't	tha	at w!	hat	you	just	testified	to?				

A After having a discussion with Mr. Batchelder concerning the case and concerning Mr. Schwartz' cooperation, it became -- it was mutually agreed that Mr. Schwartz did not fully cooperate.

O Is the answer to my question ves? I asked you if you ever had a conversation with Mr. Batchelder where Mr. Batchelder told you that he, Mr. Batchelder, was not satisfied with Mr. Schwartz' cooperation, yes or no.

A Yes, sir.

Now, during the course of the cooperation which lasted a number of months, isn't it fair to state that you had occasion to consult with Mr. Batchelder on various occasions with regard to the progress that Defendant Schwartz was making?

A No, sir.

Q You never did?

A That's correct, sir.

Q Well, how did it come to pass that this conversation suddenly occurred between vourself and Mr. Batchel with regard to Mr. Batchelder not being satisfied with Mr. Schwartz' cooperation?

A It was a week or so after Mr. Schwartz was



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1	rdjw Bramble-cross 83
2	arraigned on his arrest of June 12, 1973.
3	Q Are you aware that Mr. Schwartz was never
4	arraigned on his arrest, that he signed a waiver of agree-
5	ment?
6	On the date that Mr. Schwartz was arrested
7	and brought to 201 Varick Street he was not arraigned
8	by a judge or magistrate, was he?
9	A That's incorrect, sir.
10	Q Was he arraigned?
11	A Never brought to 201 Varick Street.
12	Q Wherever he was brought, was he arraigned
13	before a magistrate?
14	A No, sir.
15	Q Was he arraigned before a federal sitting
16	judge?
17	A Not at that time.
18	Q That's what I'm asking about, that night, was
19	he arraigned in front of any magistrate or judge?
20	A No, sir, he was not.
21	THE COURT: Did there ever come a time when
22	he was arraigned?
23	THE WITNESS: Yes, sir.
24	THE COURT: When was that?

THE WITNESS: I believe it was Thanksgiving or

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Easter.

MR. BATCHELDER: Yes, Thanksgiving, 11/23/73.

- O After he was indicted; is that correct?
- A No, sir.
- Q Before he was indicted?
- A He was arraigned -- I don't believe he was indicted at that time, no, sir.

THE COURT: This is not a superseding indictment?

MR. BATCHELDER: No, your Honor.

MR. VENEZIANO: I'll withdraw it.

THE COURT: This is a 1974 indictment.

MR. BATCHELDER: Just so the record is clear, he was arraigned on 11/23/73 by Mr. Fortuin. The indictment was handed down on February 28, 1974, your Honor.

THE COURT: Thank you. All right.

So this conversation was after Thanksgiving?

THE WITNESS: Yes, sir.

O Is it your testimony that the first and only conversation up to that point that you had had with Mr. Batchelder concerning Mr. Schwartz was when Mr. Batchelder said to you he was unsatisfied with the cooperation because only one case had been made?

A That's incorrect, sir. One case --

Q I'm asking if it's your testimony, not whether it's incorrect or correct or partially correct. Is it your testimony that the first time you spoke with Mr. Batchelder concerning Mr. Schwartz, yes or not, it was the first time or it was not the first time?

A Yes, sir, it was the first time.

THE COURT: After Thanksgiving 1973?

THE WITNESS: Yes, sir.

THE COURT: What was that arraignment date

again?

MR. BATCHELDER: Your Honor, he was arraigned on 11/23/73. He was arraigned, I believe, before Magistrate Hartenstein. Preliminary hearing was set for December 6 at 10:30.

THE COURT: It was after November 23rd that you had your first conversation with Mr. Batchelder concerning Mr. Schwartz?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Now, that conversation consisted of Mr. Batchelder'telling you of his dissatisfaction with Mr. Schwartz; isn't that basically right?

A Yes, sir.

Ŏ.		But prior	to	tha	at	CO	nversation	yo	ou h	ad	never
spoken	to	Batchelder	abo	out	Mr	r.	Schwartz;	is	tha	t	right?

A That's correct, sir.

- Q Do you know whether or not Agent Hill had spoken to Mr. Batchelder concerning Mr. Schwartz?
 - A No, sir.
 - Q No, you don't know, or no, you do know.

THE COURT: If you are going to ask a question like that you have to take the answers that come.

Q Well, do you know for a fact that Mr. Hill did speak to Mr. Batchelder or that he did not speak to Mr. Batchelder concerning Mr. Schwartz?

A When, sir?

Q Any time prior to the conversation that you had with Mr. Batchelder.

A I don't believe he did because Mr. Hill was not assigned to this region at that particular time.

Do you know how Mr. Batchelder acquainted him or found out about the progress or lack of progress of Robert Schwartz?

A After Mr. Schwartz was arraigned the case was assigned to Mr. Batchelder. Mr. Batchelder phoned the New York Joint Task Force and got in touch with me and asked me to confer with him concerningthe case.



asked me to confer with him conce

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Q He, meaning Mr. Batchelder, asked you to confer with he, Mr. Batchelder, concerning the case?

A I'm sorry, you confused me.

Q He didn't ask you to confer with Mr. Schwartz,
Mr. Batchelder in effect said confer with me on the
case, keep me posted, tell me how it's going; is that
correct?

A Yes, sir.

Q And during the period of cooperation it was you who from time to time contacted Mr. Batchelder or Mr. Batchelder who from time to time contacted you and it was then that you had these various discussions about progress of Mr. Schwartz as an informant?

A That's incorrect, sir. At that particular meeting Mr. Schwartz had previously told me that he would not cooperate with the government any longer, and I informed Mr. Batchelder of that statement and of his cooperation up until that particular point.

- Q Then, Mr. Batchelder expressed his dissatisfaction?
- A Yes, sir.
- Q Then following that, did you go back to Mr. Schwartz and tell him anything?

A No, sir, I did not. I telephoned the attorney who was supposed to be Mr. Marino at his office. I believe

1	rdjw Bramble-cross 88
2	it was after 5:00 o'clock at night, and I spoke to Mr.
3	Marino and I told him that Mr. Schwartz informed me pre-
4	viously that he would no longer cooperate
5	Q By the way, you don't deny talking to Mr.
6	Marino on that occasion, do you?
7	A Someone who said it was Mr. Marino. I don't
8	know him. I never spoke to him. I just had a telephoen
9	conversation with an individual who said he was Marino.
10	He could be someone else. It could be someone in his
11	office.
12	Q Continue.
13	A I informed Mr. Marino of Mr. Batchelder's
14	conversation with me, that at that time I thought Mr.
15	Schwartz was a prior felon and I told him that Mr. Batchel
16	felt that he did not fully cooperate with the government.
17	I also told him that Mr. Batchelder was
18	assigned to the case and could he contact Mr. Batchelder.
19	And Mr. Marino I believe told me that Mr.
20	Schwartz would no longer cooperate with the government.
21	I informed Mr. Batchelder that information.
22	Q In this conversation vou had with Mr. Batchelde
23 .	did he mention numbers? Did he say, for instance, he
24	only gave me one and I want two or three or something
25	like that?

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A I informed Mr. Batchelder that the number of cases in which Mr. Schwartz cooperated and the number of cases which at the time Mr. Schwartz stated that he would cooperate with the government, he would have to fulfill the quantity and quality of cases.

Q At that point when you spoke to Batchelder, how many cases had he cooperated on?

A Three, sir.

Q At that point, prior to your conversation with Batchelder he cooperated on three cases?

A Yes, sir.

Q So there was no question, was there, of his cooperating on two but not wanting the third, not wanting to cooperate with regard to a third?

A He was not wanting to cooperate with regard to a fourth case.

Q He was not willing to cooperate regarding a fourth case. Who wanted him to cooperate on a fourth case, your idea or Mr. Batchelder's idea?

A Before this meeting with Mr. Batchelder I had informed Mr. Schwartz he only gave us one good case and two lousey cases and I wanted one more case.

Q Well, now, you gave him the number four as a quota which he had to fulfill in effect; is that correct?

answer?

A Yes. This was an agreement --

Q That's an answer. Thank you.

MR. BATCHELDER: Can the witness finish the

THE COURT: Yes. He should.

A On the night of Mr. Schwartz' arrest we outlined certain factors or certain points which Mr. Schwartz had to fulfill.

THE COURT: In order to get what?

O In order to get what? That was my question.

A We informed Mr. Schwartz if he cooperated with the government we would give this information to the judge.

THE COURT: Was this about the quantum of this cooperation?

THE WITNESS: We told Mr. Schwartz we wanted four cases of an eighth of a kilogram of better. The question was will I be cooperating with the government for the rest of mv life? The answer was no. Just give us four cases of an eighth of a kilogram or better and this would satisfy us completely and we would give this information to the U.S. attorney who would then give it to the judge.

Q In other words, you are saying in the event of

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giving four individuals over, then what would happen?

THE COURT: He said cases not individuals.

The man has already given over more than four individuals.

Q Four cases, then what would happen is that the judge would have that made known to him; is that basically what you are saying?

A Yes.

Q That's the event that was going to transpire if he gave four cases; is that right? Yes or no.

A Yes, sir.

Q Well, if the report of the cooperation was going to be given to the judge if he gave four cases, what was going to happen in the event that he gave less than four cases?

A The same report would be made.

Q The same report would be made?

A Yes.

Q Just detailing the extent of his cooperation or lack of cooperation; is that right?

A That's correct, sir.

Q Well, I still don't understand after four, what specific event was to transpire? What was the defendant supposed to get or obtain for giving four cases? What benefit was supposed to accrue to him after giving this

fourth case?

A Basically it was to set Mr. Schwartz at ease.

Mr. Schwartz was fearful of the fact that he would be

cooperating with the government for the rest of his life.

Q To set him at ease? Was it not in fact a promise not to prosecute him? Isn't that the event which was supposed to transpire in the event Mr. Schwartz made four cases? Isn't that that mysterious something that we are talking about, that event which was supposed to occur?

MR. BATCHELDER: Is that a question or a soliloguy?

THE COURT: I would like to hear the answer.

A That's incorrect.

Q What is this thing? We seem to be grappling at air.

THE COURT: This is a soliloguy now.

Q What was to transpire? What was to happen after the magic number four occurred? What was to accure to him? What benefit was he supposed to get? What are we talking about here?

Mr. Schwartz' cooperation with the government.

THE COURT: There is a legitimate inquiry here. The question is this: What advantage would he

Yes, sir.

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A While the question may sound somewhat facetious, you had no way of knowing what a jury's verdict would be on a trial, would you? You couldn't know that one way or another.

- A Well, at the time --
 - Yes or no.

THE COURT: Let him answer that because that's the difficulty with this whole problem.

A At the time of Mr. Schwartz' arrest he did, state that he sold to me a quantity of cocaine --

Q I am not asking you that. Let me put it differently --

THE COURT: I think it's very simple. This witness thought he had your client red-handed and so do

 What was all this talk about a sentencing at this stage of the proceedings when he had not even taken a plea?

was guilty and that he would plead guilty before the judge and the judge would then have a couple of weeks in order to find ou t Mr. Schwartz' background. The office would sent the U.S. attorney a letter outlining his cooperation and would state if he cooperated fully or he did not.

1	rdjw Bramble-cross 95
2	And this would then be part of the judge's report.
3	Q Let me ask you this: If he cooperated to the
4	extent that he gave one or two or three, the extent of
. 5	that cooperation and the information concerning that
6	cooperation would go to the sentencing judge?
7	A Yes, sir.
. 8	Q And if he cooperated in four or five or six
9	or 100, that information also would go to the sentencing
10	judge?
11	A Yes, sir.
12	Q So either way the extent of his cooperation
13	was going to be brought to the judge?
14	A Yes, sir.
15	Q Whether it was three or whether it was four?
16	A That's correct, sir.
17	Q Is that right?
18	A Yes, sir.
19	Q So what did he have to gain according to you
20	by giving this extra case?
21	MR. BATCHELDER. Objection as to what he had
22	to gain.
23	THE COURT: That's a legitimate inquiry.
24	Q If the cooperation was going to go to the judge

no matter what extent it was --

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THE COURT: I overruled the objection so why keep talking? Let the man answer.

A It would be outlined in the letter that Mr. Schwartz fully cooperated and that Mr. Schwartz, if he did not give us this fourth case, he would then say in the letter that he did not cooperate fully.

Q Four cases meant he cooperated fully and three cases did not?

A Yes, sir. I am saving Mr. Schwartz did not live up to his agreement because he only gave us one case of an eighth of a kilogram or better and the two other cases were less.

THE COURT: Did you have any reason to think that he had more cases to give you?

THE WITNESS: Yes, sir.

On In the event he had given less than four you would have sent a letter or told the U.S. attorney or related to the U.S. attorney information which in your opinion would have led to a letter to a judge which he had not fully cooperated; is that what you are saying?

A Yes. I would make it known to the U.S. attorney that he did not fully cooperate.

O Did you speak to Agent Pope before he testified this afternoon?

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A Yes, sir.

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Q Did you speak to him with regard to the testimony he was going to give and the testimonv that you were going to give?

A No. We discussed the case. I did not talk about his testimony. I did not know his testimony.

- You did not know his testimony?
- A How would I know his testimony?

Q Well, even forgetting about today, prior to today did you not ever come together with Mr. Pope and discuss what your testimony would be in the event of the day of this hearing?

A No. We discussed the circumstances of the case on several occasions with Mr. Batchelder. As to his exact testimony I had no idea what he would say.

Q You are saying you never discussed with Mr.

Pope alone what your testimony would be on this hearing?

A I have discussed this case with Mr. Pope alone several times.

Q No, no, with regard to what vour testimony would be on this hearing?

A I had no knowledge of my specific testimony because I would not know what questions would be asked of me.

THE COURT: The Court will assume the U.S. attorney discussed the case with the witnesses. This witness has already testified he discussed it with Mr. Pope, so let's go on to something else.

Q Well, did Mr. Pope at any time give you or eelate to you this specific number of cases that Mr. Schwartz must make in terms of the success or failure of his cooperation?

A He did not give it to me. It was a question that was raised by Mr. Schwartz on several occasions during his cooperation.

He stated on the night of June 12, when he spoke to Mr. Pope. that Mr. Pope told him that he would only have to give the government three cases. However, when he spoke to me he told me -- I told him, in fact I did tell him I wanted four cases from him.

- Q Where did the first number three come from, from Pope?
 - A This is what Mr. Schwartz told me.
- Q Mr. Schwartz told vou that Mr. Pope asked him for three cases to be made; is that right?
 - A .. Yes, sir. That's what Mr. Schwartz told me.
- Q This fourth case was your own gratuitous idea, that you wanted four?

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THE COURT: I know all that. You are getting repetitious. He put on a request for an additional fourth case. I know that. Let's go on to something else.

Q How long have you been doing this type of work, Mr. Bramble?

- A Narcotics investigations?
- Q Yes.

No.

- A Since June of 1969.
- Q And it is fair to sav, isn't it, that you use informants quite a bit?

THE COURT: The Court knows that. Let's keep going.

Q In your experience do most informants enter pleas of guilty or go to trial?

THE COURT: You are getting repetitious.

MR. VENEZIANO: It's a different witness.

THE COURT: I don't care. I have had enough.

MR. VENEZIANO: No further questions.

MR. BATCHELDER: Nothing further.

THE COURT: You are excused.

Anything further?

MR. BATCHELDER: No, your Honor.

THE COURT: Any rebuttal?

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MR. VENEZIANO: No, your Honor.

THE COURT: All right, I will declare the hearing closed and decision reserved. I ask the government to order the transcript.

Will you do that, Mr. Batchelder, as soon as you get a chance?

MR. BATCHELDER: I will do it right now, sir.

MR. VENEZIANO: At the close of the hearing
I think it might be appropriate if I might request a
conference at the side bar, if I may.

THE COURT: I will have a very brief conference with you on the record in the robing room. I have another matter scheduled this afternoon but I will hear you very briefly in the robing room with the reporter.

(In the robing room)

THE COURT: What is the difficulty?

MR. VENEZIANO: Not a difficulty, your Honor.

If you recall we explored possible ways and methods of not escalating the issues in this case between the last time the case was on and today.

I would just like to state to the Court that

I approached Mr. Batchelder with a suggestion, I think

in terms of completeness of knowledge the Court ought to

be made aware of everything we discussed.

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I stated perhaps we could avoid a hearing on any future situation in this case by the U.S. attorney on the date of sentence coming in with a recommendation based upon all of the extenuating circumstances, the promise we alleged was made and everything else; coming in with a recommendation that the defendant not be incarcerated.

Mr. Batchelder said he would confer with his superiors and he took the matter up with his superiors and his superiors found that unacceptable.

I want to emphasize that this agreement was to be between the U.S. attorney's office and us and certainly was in no way to touch the Court and it did not affect your Honor's sentencing power.

THE COURT: Please understand I consider any discussions of sentence premature until this motion is disposed of. In fact, I have not read the pre-sentence report except to satisfy myself that these prior convictions did exist and I also did look at the memorandum from the Drug Enforcement Administration which did detail the nature and extent of his cooperation. .

.. I don't know for certain whether I should treat that as classified or not. I have read into the record the relevant part of it. It shows that he produced

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or initiated three cases and the last case he initiated was November 9, 1973. That his three cases resulted in five arrests, and the quantities of narcotic have been detailed also.

If you need to have any of that information

I will mark that as part of this record.

As I view it, I have a factual legal question here and it would be most improvident and premature to talk at all about sentencing.

What they recommend to the Court is their business. I have to tell you right now that I am looking at a third offender in narcotics and even if I gave him an amplitude of creidt for his cooperation I think it would be most injudicious to impose a sentence which did not involve some imprisonment. I won't put him on probation, not with that record.

MR. VENEZIANO: I didn't bring the matter up even trying to get a hint of what vour Honor's intention was.

THE COURT: I may have to dismiss it if your point is well taken. I have to make findings of fact and conclusions of law.

MR. VENEZIANO: I would like to bring up several other matters. Your Honor mentioned that this case does

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get complicated and I agree upon analysis the further we advance into this case the more complicated it gets.

The question of detriment was brought up.

I didn't want to bring this up until after the hearing because I saw no way to avoid a hearing so you could get the knowledge to make a ruling. It occurred to me that any other defendant who is arrested and who is going to be indicted can simply write a letter to the foreman of the grand jury --

THE COURT: Forget that because this man's own testimony before me today indicates that, viewed most favorable to him on this record, he was informed he would be indicted but he would not be prosecuted.

I infer from that they would nolle the indictment or give him a pardon from the Executive branch . or give him immunity.

Really, Mr. Batchelder, you shouldn't haugh because I had at least a couple of villains who were given immunity in cases pending before me. One was Robert Gardner.

MR. BATCHELDER: I have nothing to say on that, your Honor.

THE COURT: I don' appreciate your laughter.

MR. BATCHELDER I think it's a sad comment,

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let's put it that way.

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THE COURT: I have at least a couple of cases where immunity has been given. It wasn't done here.

Taking your client's testimony as one hundred percent truthful, viewing the testimony in a most favorable light, it was that he would be indicted.

MR. VENEZIANO: I hesitate to bring this up now because of your Honor's very strong admonition with regard to my mentioning it inside. I ask if it would be all right to mention it now after the hearing.

THE COURT: I have never limited you from making offers of proof. I am not doing it now but I am not going to listen to nonsense cross examination of witnesses in the area of polygraphs.

MR. VENEZIANO: This is not cross examination, your Honor.

THE COURT: You may make an offer of proof.

MR. VENEZIANO: It's not even a question of an offer of proof. I had occurred to me, I was thinking of various facets that this case might take and various ways in which it might go. I know that the polygraph is certainly not allowable on trial. The cases . clearly establish that and there is no question about it.

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I know also there are other categories of evidence which are clearly inadmissible at trial which, under certain circumstances, would be admissible in the grand jury.

Your Honor yourself said the last time that the foreman of the grand jury has an absolute right not to return a true bill. They may be so taken by the injustice of the situation.

I know we have situations where, for instance hearsay, clearly inadmissible at trial --

THE COURT: You are past the grand jury.

Viewed most favorably with this man it was his understanding with the government agent that he would be indicted. If that was his understanding that's the end of it.

What he should have shown the grand jury in theline of a polygraph or hearsay or anything else is not at issue in this case. I am taking the contention right from the man's own mouth, I made a note in my bench notes of it, and he testified that his understanding of the agent was that he would be indicted but that he would not be prosecuted following indictment. I just don't see how you can elude his own sworn testimony in that regard.

MR. VENEZIANO:

I don't wish to do that. It

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occurs to me that if the grand jury should hear even if he was to be indicted but not prosecuted, they might be so taken by the injustice of the thing they might refuse to return a true bill the second time around.

MR. BATCHELDER: This is speculation piled on speculation on speculation.

THE COURT: I think he is entitled to make the argument and I will take it under consideration. I don't see an awful lot of merit.

MR. VENEZIANO: The situation seems somewhat incongruous because I think based on cases that allow hearsay in grand jury which would not be admissible in trial, based upon cases which allow narcotics, and there are such cases, it just occurred to me as a very fascinating test that a polygraph test not admissible on trial might conceivably be admissible in the grand jury.

THE COURT: There is no detriment claimed or wringdoing asserted on the fact he was indicted. The man expected to be indicted. It was his understanding with the government he would be indicted. He has told us that out of his own mouth.

MR. VENEZIANO: I meant the second time around.

Theoretically should your Honor dismiss this case and should my client go into the grand jury, I think if those

grand jurors could see the results of a polygraph examination showing that he was truthful they may not indict him. I think that is a significant factor.

THE COURT: If I were to sustain your views in this hearing he would be home free because I think jeopardy would have attached to him.

All right, I am now closing the record unless there is something further.

MR. VENEZIANO: Nothing else.

MR. BATCHELDER: Nothing else.

THE COURT: Decision is reserve. I'm not dealing with this sentence date. Unles I reach a decision and make findings and conclusions on this motion because I think it would be most improper.

On the other hand the man is continued on bail. I am going to direct you to make that clear to him so there will be no question about him staying within the bail limits and being amenable to the Court's process. He is still your tenant up there, is he?

MR. VENEZIANO: Yes, he is, your Honor. We have a two year lease. He is not going anywhere.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

74 Crim. 201

-v-

MEMORANDUM AND ORDER

ROBERT SCHWARTZ,

Defendant.

Brieant, J.

On July 10, 1974 a jury verdict of guilty after trial was rendered, determining that defendant Robert Schwartz had violated 21 U.S.C. §812, 841(a)(1) and 841(b)(1)(A) by engaging in a conspiracy to distribute cocaine hydrochloride, and also by substantive possession, and distribution thereof, on March 20, 1973.

No sentence has been imposed because of a motion made September 3, 1974 by defendant for an order "vacating conviction pursuant to agreement with prosecution". An evidentiary hearing was held on November 8, 1974.

Defendant's contention is that he was told by a detective assigned to Joint Task Force, one Bramble, that he would not be

prosecuted "if he cooperated with the Joint Task Force and gave information leading to the arrest of two or three other narcotic dealers" (Affidavit of Ronald J. Veneziano, Esq., sworn to August 15, 1974).

The Government concedes that this defendant became a "cooperating individual" on the occasion of his arrest on June 12, 1973. His efforts initiated three cases, the last of which was opened November 8, 1973, and produced five narcotics arrests.

On February 28, 1974, Detective Bramble testified before the federal Grand Jury in this District. He set forth the fact of a rale of cocaine by Schwartz and Roger Stone on March 19-20, 1973.

The proof at the hearing showed that defendant was affected on June 12, 1973 pursuant to a warrant, that he was brought to 26 Federal Plaza by the arresting officer for processing after 5:00 P.M. There, he first met Detective Bramble in his official capacity, although they had met previously when Bramble had been dealing undercover.

Defendant agreed, with alacrity, to cooperate.

He signed a waiver of arraignment, in order to preserve his anonymity, and started right in to work that night, from a telephone at 26 Federal Plaza, as Confidential Informant SCI-3-X042.

Defendant testified that he was promised, by Bramble in the presence of Special Agent John B. Pope, that he "would be indicted, but not prosecuted", (Tr. p.7).

Schwartz' cooperation continued for approximately five months. During this period, Bramble and another agent, not named, according to defendant, had a conversation, in a parked car, in which he said that "because it went against [him] entirely", he wished to desist cooperating after two drug sellers had been given up. Bramble wanted a third, and insisted on more efforts. Schwartz produced a third seller. He never had any further discussions with Det. Bramble.

Defendant did not assert the claimed promise on November 23, 1973 when being interviewed prior to arraignment by Assistant U. S. Attorney Fortuin. He did not protest this significant step in criminal proceedings against him, as being

unjust, or in breach of the claimed agreement, as he would ordinarily be expected to do.

Amelio Marino, a member of the bar and defendant's landlord, while not acting in any formal capacity as his lawyer, counseled cooperation. He conferred with Bramble. I believe his testimony accurately states Bramble's conversations at p.42 of the transcript:

"His approximate words was he was not interested in Mr. Schwartz, he was not interested in prosecuting Mr. Schwartz. He was interested in other people and he wanted Schwartz to cooperate."

Attorney Marino, to the extent he was counselling defendant, knew that Detective Bramble lacked the power or authority to decide whether the case would be prosecuted or not; but he hoped defendant would aid his relatively hopeless situation by his cooperation, and that Bramble would help him in return, "somethow or other". (Tr. p.48).

Special Agent Pope, Bramble's superior, who concededly was present at the time of the alleged promise, denied any such promise was made. Such a promise, if made, would have contravened bureau policy, (Tr. p.53). Bramble himself testified that

before he was introduced to Schwartz in an official capacity,
he had learned that defendant wished to cooperate, and
had so advised the arresting officers, either McGinn or Cole.

Defendant's motivation to cooperate was to avoid jail pending
arraignment the following morning.

I decline to find that any promise was made as contended for here. What defendant was told is that he need not look forward to cooperating in drug enforcement for the balance of his life, and that after four cases, the Court would be informed on sentencing, that Schwartz had "cooperated fully". A lesser number would be regarded merely as "cooperation", but not "fully". While defendant had not offered to plead guilty; both parties to all the discussions knew of his direct participation in a sale to an agent, and expected his ultimate conviction and sentence.

Defendant suffered no detriment; according to his theory of the promise, he was in any event to be indicted—it was merely the prosecution which was to be withheld. The form attributed to the alleged promise is absurd; to dispose of an indictment by nolle prosse order in this pistrict requires more

difficulty than making the simple decision not to present the case to the grand jury, or not to sign the indictment when returned.

Defendant's contentions as to the nature and extent of his bargain with the law enforcement officials are absurd, and not supported by credible evidence. At most he shows existence of an understanding that, after four cases made, this second federal narcotics offender would be regarded as having cooperated "fully", and he would not be in perpetual thrall to DEA.

The motion is denied for failure of proof.

So Ordered.

Dated: New York, New York January 20, 1975

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR. U. S. D. J.



